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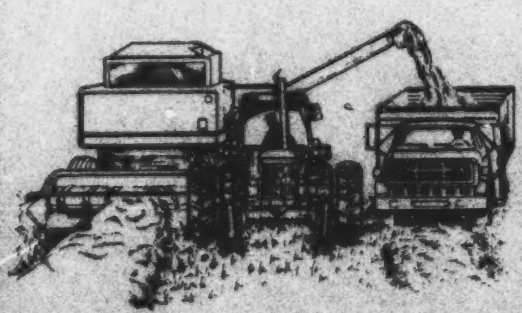

Dealing With Financial Difficulty
A Legal Guide For
Farmers in Saskatchewan

Forward

Credit is an integral part of most farm businesses. Farmers often pay little attention to the legal implications of credit arrangements when loans are paid on time.

A downturn in the farm economy has resulted in financial difficulty for many farmers, especially those with heavy debt. Now many farmers are concerned with their legal rights and obligations with respect to credit.

The purpose of this publication is to provide an easy to read outline and explanation of the legal aspects of farm financial difficulty.

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Farm Law

Introduction

The aim of this book is to provide easy to read information for farmers concerning the legal aspects of farm financial difficulties.

Today's farm economic problems are a heavy financial and emotional burden upon many farmers. These problems are doubly difficult to deal with because farmers will have to use credit as an integral part of their future financial planning in order to get through these troubled times. The only answer to this quandary will be found in realistic financial planning and proper record keeping in order to monitor expenses and reduce them wherever possible.

Credit has unfortunately become the master rather than the obedient servant on many farms today. Farmers' profit expectations have not been met due to a decrease in commodity prices, adverse weather conditions and fluctuating interest rates at a time when all of their expenses continued to increase. Farm credit can become a severe taskmaster when it does get out of control. This book will try to show what alternative courses of action there are for farmers in financial difficulty and what the consequences of choosing these alternatives of action are.

The alternatives of action available to farmers are as follows:

(a) do nothing
(b) refinance
(c) sell down and refinance
(d) sell out

Before discussing these alternatives, this book will look at the laws which affect the farmer in financial difficulty and how they will influence the decisions he will make for his farming future.

Agriculture is the largest single industry in the Province of Saskatchewan and the Government of Saskatchewan has traditionally intervened in favour of farmers in financial difficulty by passing laws which regulate the terms of credit contracts to lessen their harshness or allow the farmer more time to meet his obligations. The intent of the Legislature in enacting these laws has been to give as much protection as possible to farmers without destroying the lenders' confidence in the credit system in Saskatchewan. Credit is necessary for farmers, whether they are in financial difficulty or not, in order to give them the flexibility which they require in planning their yearly farming operations.

A number of governmental agencies and programs have also been set up to assist the farmer in dealing with financial hardship and planning for the farming future. These agencies are set up to give advice to farmers and/or give financial counselling, planning assistance and mediation services between a farmer and his creditors.

When explaining the effect of government on farmers it is also important to remember that the Federal Government also passes laws which regulate the availability of credit from banks and the remedies that are available to them. This power is given to the Federal Government under the British North America Act (our constitution passed in 1867). The federal statute regulating banks and banking is the Bank Act. The most well known of the sections of the Bank Act for farmers is Section 178 which authorizes the chartered banks to make loans to farmers and gives the banks special protection and security on the farmer's goods. It is very important to understand that the protections given to farmers under provincial legislation do not necessarily apply to bank loans authorized under Section 178 of the Bank Act.

In order to assist the farmer in making the right decisions for his future this book will look firstly at the different types of credit arrangements available to him, what the remedies of his creditors are when he is in default under his loans or credit agreements, and what governmental assistance he can obtain to come out of financial difficulty.

Hopefully this book will be an easy to read resource guide for farmers to help them in making tough financial decisions in the coming years. It is not intended to be an exhaustive legal manual and it should be understood that it is intended to assist and not replace competent legal or accounting advice from experienced professionals.

For farmers who are farming in either Alberta or Manitoba it is necessary for them to realize that the provincial laws regulating what steps creditors have to take before they can seize and sell farm assets such as land and machinery will vary from province to province. As a general rule of thumb, farmers in the Province of Saskatchewan are far better protected than their counterparts in Manitoba or Alberta. These protections are limited to the Province of Saskatchewan and where a farmer has land or machinery situated in another province the creditor's right to seize and sue will be regulated by the laws of that province. The Government of Saskatchewan's laws apply only in the Province of Saskatchewan. Therefore, if a farmer owns land or machinery situated in a province outside of Saskatchewan then he is best to obtain legal advice and not rely on what is in this book for that machinery and land.

Chapter 1

1.1 The Distinction Between Secured and Unsecured Credit

When any farmer uses credit he enters into a contract which obligates him to repay the money which he has borrowed according to certain terms which are contained in the contract. These terms will set out the frequency and amount of his payments, the rate of interest and numerous other obligations which he may be required to meet. The contracts which a farmer will sign in order to obtain credit will be broken down into two major groups for the purpose of analysis. The distinguishing factor for this classification will be whether or not the farmer pledges land or goods such as farm machinery as collateral to secure the debt and which the creditor can seize if the farmer fails to meet his obligations under the contract.

A secured creditor is a creditor who holds some asset of the farmer as collateral for the repayment of some debt. In addition to his obligation to repay the debt there are a number of other obligations imposed upon the farmer relating to the preservation of the collateral pledged until the debt is repaid.

The term secured creditor is defined in the Bankruptcy Act as "a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the debtor or any part thereof as security for a debt accruing to him from the debtor".

Examples of unsecured credit are:

1) Trade credit
2) Unsecured bank loans

Examples of secured credit are:

1) Land Mortgages
2) Hypothecation of Duplicate Certificates of Title
3) Agreements for Sale of Land
4) Chattel Mortgages
5) Conditional Sales Contracts and Lien Notes
6) Section 178 Bank Act Security
7) General Security Agreements
8) Farm Corporation Debenture
9) Guarantees

1.2 Types of Unsecured Credit

1.2(a) Trade Credit

Trade credit is the most common way of using someone else's money to work for you. Whenever a farmer purchases seed from the co-op, or fuel from a bulk fuel dealer, or charges any farm purchases under the seller's credit plan he is using the seller's money for some period of time. The benefit of this type of credit is that the seller will generally allow the purchaser an interest-free repayment period of up to thirty days from the date of purchase. Thus the farmer is able to use the seller's money for the thirty day period free of interest. There is, however, a drawback to this form of credit. If the farmer is not able to repay the money within the thirty day period, the interest rate on the outstanding balance is far higher than that charged by the banks or credit unions. Interest rates on overdue bills at co-operatives, grain elevators, and stores will vary from 1 1/2% per month to 2 1/2% per month (18-30% per year.) This form of credit should be used as little as possible if the farmer is not able to pay for the goods within the thirty day period, if at all possible.

1.2(b) Unsecured Bank Loans

Where a farmer is borrowing small sums of money from his bank, or is using the overdraft protection on his chequing account, he is obtaining money on credit from the bank without giving any kind of security. The different types of unsecured bank loans are as follows:

(i) Overdraft Protection - This is a service which many banks and credit unions extend to their customers under a variety of names. This service allows you to write cheques on your bank account when there is not sufficient funds to cover the cheque or cheques. It is very important not to abuse this service. Consider it as a privilege which you should use sparingly. The interest rates on overdrafts may be as high as 10% over the rate at which the bank will lend the money to you on a prearranged unsecured personal or farm loan. If you are going to write a cheque for any amount of money over your chequing account balance it is best for you to prearrange a loan rather than pay the extra interest on your overdraft.

(ii) Credit Cards - These cards have been blamed for creating a consumer credit crisis in our urban centres today. They are not devils on their own but in the hands of an impulse shopper they can be a terrible thing. One no longer needs to have money to buy things, only a credit limit. The cost of spontaneous charging is also very high. Rates of 18-24% per year are not uncommon. As with trade credit, you will often obtain an interest free period of up to thirty days on purchases. Some credit card companies, however, are charging monthly user fees in order to halt this interest free period. Credit card companies also charge the vendor a percentage fee on all credit card sales, thus no credit card sale is ever interest free. In fact if

you are paying cash for your purchase from a vendor you can ask for a reduction equivalent to the amount that he has figured into the price for the credit card company.

(iii) Promissory Notes - Most small personal and farm loans given without security are in the form of a promissory note. This is simply a written promise to repay the money with interest at a fixed or floating rate. It may be payable in installments or on demand. A demand promissory note may also generally be repaid in monthly installments, but the bank reserves the right to call for payment in full if you miss payments. Monies loaned under promissory notes generally bear an interest rate substantially below the rate charged by sellers or credit card companies but somewhat higher than secured loans such as mortgages.

1.3 Land Mortgages

The word mortgage comes from two French words which were adopted by the English in the 12th century to represent a particular type of credit arrangement. The two words are mort (dead) and gage (pledge). It literally meant that the estate pledged became dead or entirely lost by a failure to pay.

Under the mortgage of ancient times, the failure to pay the amount due, when due, gave the mortgagee the immediate right to apply for an order foreclosing out the interest of the mortgagor and giving title to the property to him.

The best definition of a mortgage for today's purposes is found in the book "Falconbridge on Mortgages Citation" at page 7. It reads as follows:

"A mortgage is a conveyance of land as security for the payment of a debt or the discharge of some other obligation for which it is given, the security being redeemable on the payment or discharge of such debt or obligation."

A second definition of the term mortgage is found in the Land Titles Act of Saskatchewan at Section 2(1)(n). It reads as follows:

"2(1)(n) "mortgage" means a charge on land created for securing payment of money and includes a hypothecation of such charge and a charge created for securing payment of an annuity, rent, charge or sum of money other than a debt or a loan;"

Once a person has given a mortgage on land to a bank or a credit union then the mortgagee (the bank or credit union) was traditionally considered to be the legal owner of the land, and the mortgagor (the farmer-borrower) only had the right to redeem the land on payment of the debt. Today under the Land Titles system the mortgagor's name remains on the title as the registered owner but he is required to submit the duplicate certificate title to the mortgaged property to the Land Titles Office with the first mortgage on the property and he can only deal with the property subject to the mortgage until the mortgage debt has been paid, the property has been redeemed and the mortgage has been discharged. The foreclosure proceedings which the bank takes in court only serves to extinguish the farmers right to redeem (his "Equity of Redemption") and give the bank clear title to the land.

Today the terms and conditions of all mortgages are regulated by laws passed by the provincial government. The remedies of the mortgagee under any mortgage are strictly supervised by the courts to see that the mortgagor is given some opportunity to redeem the property if he misses payments or can not pay out the mortgage when it becomes due.

There are three statutes which regulate the procedure which a mortgagee must follow to foreclose on farm property. These are:

i) The Land Contracts (Actions) Act
ii) The Farm Security Act
iii) The Farm Land Security Act

The function of these statutes will be discussed in detail in following chapters.

1.4 Hypothecation of Duplicate Certificates of Title

There is little practical difference between the hypothecation of duplicate certificates of title and granting a mortgage of lands in Saskatchewan today, but these two methods of putting up land as security for loans of money have a different legal intention. Under a mortgage the mortgagor transfers the legal title to the property to the mortgagee and retains only the right to redeem the property by payment of the loan. Under a hypothecation agreement, however, legal title to the property and possession of it remains with the hypothecary debtor and hypothecary creditor only has the right to apply for sale of the land under the Land Contracts (Actions) Act. Actions of these kind are also affected by the Farm Land Security Act.

Interestingly enough, the English imported the words "mort" and "gage" from the French language to describe a uniquely English legal concept and the hypothecation of duplicate certificate of title is a French legal concept imported into English Seafaring Law originally. However, when

the authors of French legal dictionaries looked for the French equivalent of the English word mortgage, they used their word "hypotheque" which was not the actual equivalent. Today, in order to recognize the difference in legal concepts, Canadian authors of English-French dictionaries have now adopted the English word mortgage into the French language as a new word by itself rather than mix up the two legal concepts as the French legal authors had done in France.

For all intents and purposes, however, there is little practical difference between a formal mortgage and a hypothecation of duplicate certificate of title, with the exception that hypothecation is usually used where the amount of money loaned is small and does not justify the legal costs of preparing and registering a mortgage.

1.5 Chattel Mortgages

Much of what has been said about mortgages applies equally to chattel mortgages. The only difference is that the collateral being mortgaged is personal property rather than real property. Personal property can be loosely defined as anything that is not land or buildings affixed to land.

This difference is very important because the transportability of personal property makes it necessary to develop different concepts for the attachment and registration of security interests in these items. The law governing the validity of all security interests in personal property is the Personal Property Act. The two most important concepts under the Act are:

(a) attachment of security interests
(b) perfection of security interests

1.5(a) Attachment of Security Interests

The Act states that a secured party acquires an interest in the collateral when two things happen -- when he has given value and the debtor has acquired rights in the goods, unless the debtor and the secured party have otherwise agreed.

Examples of Attachment:

1. When a farmer borrows $10,000 to pay for fertilizer and puts his tractor up for security then the security interest in the tractor attaches on the moment that the money is given as the farmer already owns the tractor.

2. When a farmer borrows $10,000 from a bank to purchase a tractor and gives a chattel mortgage on the tractor to secure the loan then the security interest in the tractor does not attach to it until the bank has given the money to the dealer and he has acquired title to the tractor from the dealer.

3. When a farmer borrows $100,000 for an operating loan and agrees to put up all of his cattle, born and unborn, his crops and all of his machinery as security for the loan the security interest attaches as follows:

(i) Machinery – the security interest attaches to all machinery he owns at the time of the advancing of the money to him; however, if the farmer purchases a new tractor from a dealer and the dealer finances the sale or the farmer borrows the money from another bank, the bank or the dealer's security interest will attach that tractor in priority to the previous general security interest, because it is a purchase money security interest and it is accorded special protection under the Act in these circumstances.

(ii) Cattle – the security interest attaches to all the cattle which he owns at the time of the loan at the time of advancing the money to him, and as the calves are conceived (when the cows become pregnant) the security interest attaches to them as well.

(iii) Crops – the security interest attaches to the crops when they become growing crops, however, unless the security interest in the crops is acquired in conjunction with a lease or mortgage of lands and the parties have agreed in the lease or mortgage that the security interest will attach to crops grown in subsequent years, the security interest will not affect crops grown in subsequent years.

Once a secured party has given money or goods and has acquired a security interest in personal property as a result, he must take some steps to make that interest known to the rest of the world who are only able to see that the debtor has apparent ownership and possession of the goods, be they cattle, farm implements or any other type of personal property. The secured party does this by registering a document called a "Financing Statement" with the Personal Property Security Registry. This financing statement contains the following information:

(a) The particular type of security interest -- a chattel mortgage, conditional sales contract, lease, etc.

(b) His name and the name of the debtor.

(c) The type of collateral and where available, the serial number, manufacturer, and the color.

The concept of perfection is important to assist in the determination of priorities between secured

creditors, and a secured party who has failed to register a financing statement may lose the right to claim the goods from another secured party or a person who has bought the goods in good faith from the farmer, but the security interest is still good against the farmer after it has attached to the goods.

The Act applies to all forms of security agreements without regard to their form and without regard to the person who has title to the collateral that creates a security interest including: a chattel mortgage, conditional sales contracts, floating charges, pledges, debentures, trust indentures or trust receipt, leases, assignments, consignments or transfers of chattel paper.

There is, however, one notable exception to this general statement. This is security interest in personal property taken as security under loans to farmers from the chartered banks under the authority of the Bank Act Section 178. There is a separate registry system and a set of rules for these loans which are administered by the Federal Government. The Personal Property Act which is an enactment of the Provincial Government is subordinate to the federal legislation, thus the separate registry system and set of rules. The Bank Act will be dealt with later in this chapter.

When the farmer is in breach of his obligations under a chattel mortgage or other security agreement, one of the remedies that the secured party may exercise is to take possession of the collateral pledged as security under the agreement. The most common default is the failure to make payments when they come due but there are others such as failing to insure the collateral, declaring bankruptcy or disposing of some of the collateral without permission of the secured party.

The general procedure for taking possession of collateral is outlined in Part Five of the Personal Property Act. However, the procedures set out there are specifically tightened up for the taking of possession of most farm machinery, equipment and farm trucks by the Limitation of Civil Rights Act. The Limitation of Civil Rights Act sets out a procedure for taking of possession of a limited number of articles including farm equipment, implements and farm trucks. These provisions will also be examined in this book.

1.6 Conditional Sales Contract

A conditional sales contract is a form of vendor credit in which the vendor of an item of personal property, be it a television or a four wheel drive tractor, gives possession of the item to the farmer on his signing a contract under which he is obligated to pay the purchase price. If he fails to fulfill his obligation to pay any instalment of the purchase price the vendor has the right to repossess the item. Although possession of the item passes to the farmer at the time of the signing of the agreement, ownership remains in the vendor until the full price is paid, or at such other time as is stated in the agreement.

As in the case of chattel mortgages, the vendor must register a financing statement in the personal property register within 10 days of giving the goods to the farmer in order protect his security interest against intervening secured parties. However, the interest of the vendor is good against the farmer who has possession without registration after the agreement has been signed.

There is a specific form of conditional sales contract used only in sales of farm implements and machinery sold by farm implement dealers to farmers. This contract is a "lien note". Its form is prescribed under the Agricultural Implements Act and it is given by a purchaser to a dealer in farm implements and machinery. It is registered as a security agreement under the Personal Property Act, and gives the vendor the right to retake possession upon the farmer defaulting on payment of an installment, or where he absconds, or where he lets the implement go out of his possession without consent of the vendor.

As with chattel mortgages, the procedure for taking possession of farm implements and farm trucks is set out in the Limitation of Civil Rights Act, and when a vendor wishes to retake possession of these kinds of items sold to a farmer under a conditional sales contract or a lien note he will have to follow that procedure.

There is a further limitation on the vendor's remedies under conditional sales contracts. The Limitation of Civil Rights Act states that in the absence of the purchaser's deliberate or negligent damage to the article sold, the vendor is limited to repossessing the item, he may not sue for the shortfall after its sale. This restriction is not imposed under chattel mortgages. As a result, the farmer may find that farm implement dealer interest rates may be higher to cover the potential loss which he may be exposed to after retaking possession.

1.7 Section 178, Bank Act Security

Section 178 of the Bank Act empowers banks (not credit unions or trust companies) to lend money to farmers on the security of crops, farm machinery and equipment, livestock and farm electrical for the following purposes:

(a) for the purchase of seed grain,

(b) for the purpose of purchase of pesticide,
(c) for the purchase of livestock and feed,
(d) for the purchase of agricultural implements,
(e) repair of farm machinery, alteration of farm electrical systems, erection of fencing or works for drainage, and farm improvements to which the Farm Improvement Loans Act applies.

Section 178 security has the effect of transferring the ownership of the items given as security to the bank without delivering them up. The bank has complete ownership and control as if it had title to the goods. The bank is entitled to ownership of the goods pledged subject to the right of the farmer to redeem them by fulfilling his obligations under the loan agreement. Where the farmer defaults under his obligations, the bank may step in and repossess the goods.

The events which allow a bank to take possession of the secured goods are set out in Section 178(3) of the Bank Act. The events are:

(a) Non-payment to any of the loans or advances for which the security was given,

(b) Failure to care for or harvest any crop or to care for any livestock covered by the security,

(c) Failure to care for any property on which security is given,

(d) Any attempt, without the consent of the bank to dispose of any property covered by the security,

(e) Seizure of any property.

The Bank Act gives greater latitude in the reasons for taking possession of goods and as the bank is considered to be the owner of the goods, there is no right to redeem them without paying the full amount owing under the agreement.

The bank security taken under Section 178 is only valid if, in fact, money is advanced to the farmer. It can not be used to secure past advances to the farmer, however, the money advanced may be used to retire past indebtedness to the same bank. New security agreements do not have to be executed from time to time either. This security is in effect a revolving security covering all of the goods of the kind described passing through the designated premises of the farmer-borrower for the period of time for which the credit was granted.

It should be noted that there is no necessity for the bank to register its security interest under the Personal Property Security Registry, and in fact a search of that registry will not disclose the existence of such agreements. Instead the bank must register a notice of intention to take security under the Bank Act. This is a separate federal registry administered by the Bank of Canada.

1.8 General Security Agreements

A General Security Agreement is a mortgage of the entire undertaking of the farmer. This type of arrangement is used in Saskatchewan for loaning money to farmers but the Limitation of Civil Rights Act prescribes a procedure to be followed for the taking of possession of farm machinery, which limits the speed with which the lender may take possession of such machinery. The powers to take possession under such agreements is overruled by the notice provisions of the L.C.R.A. However, it is still popular with banks and credit unions who are loaning monies to farming corporations as these corporations can waive the protection of the Act. Under such an agreement the bank may upon the farming corporation's failure to live up to its obligations under the agreement, appoint a receiver for the purpose of entering upon the farm and selling off the assets of the farming corporation.

1.9 Farm Corporation Debentures

A debenture is defined as "a document which either creates a debt or acknowledges it and any document which fulfills either of these criteria may be a debenture". It is a common form of security for banks and credit unions to take when lending money to corporations. The loan involved may be a term loan or a demand loan. A debenture does not necessarily contain terms stating that certain property is charged as security in addition to the agreement to repay the loan, but this is usual.

The security given may be fixed charges or mortgages of land and floating charges on all the other assets of the corporation. A floating mortgage is one which does not specifically affect any item until some event of default occurs and the mortgage takes some step to cause the security to attach, or crystallize. At that time the bank may step in and seize the assets of the corporation and sell them or it may appoint a receiver to run the business or wind it down and arrange for an orderly sale of the assets. The receiver's powers are derived from the debenture and thus it is important to see what powers the receiver is given thereunder. These powers can be seen by reading the debenture.

1.10 Guarantees

A guarantee is a contract, which must be evidenced in writing and be signed by the guarantor. In it the guarantor undertakes to be answerable to a creditor for the debt of another person, the debtor, who is the person primarily liable for the debt. Before signing the guarantee, the guarantor should read it very carefully. It may only be limited to a single loan, but the standard form of most guarantees is a continuing guarantee of a series of loans or transactions. Because the guarantor may not have any control over the debtor's business or farm he should be very leery of signing a guarantee for more than one transaction or loan.

Before a guarantor can be called upon to pay the debtor's debt, the creditor must prove the debtor's liability under the contract. The debtor must be in default under his contract and if there are any conditions precedent to his liability such as notice required to be given prior to payment, this must be done.

Common guarantee situations are guarantees given by the principal shareholders of farming corporations or a parent's guarantee of his child's debts.

Where a guarantor pays off a debt, he is entitled to step into the shoes of the creditor and enforce the security against the debtor. In particular, under guarantees of loans under Section 178 of the Bank Act, the guarantor may exercise all of the remedies of the bank under the Act after paying the debt.

A guarantee is construed strictly by the courts in favour of the guarantor and there are a number of defences open to the guarantor. Variations of the contract between the creditor and the debtor, binding agreements to give time to the debtor to pay, diminution of the value of the security by the creditor, the discharge of the principal debtor, or his death all will discharge the guarantee. If you are called upon to honour a guarantee see that you receive legal advice as to your duty to pay before you do so.

Chapter 2

Farm Creditor's Remedies

2.1 Introduction

This chapter will examine the remedies which are available to creditors who are attempting to collect on debts owed to them by farmers.

The remedies exercised by creditors can be roughly divided into two categories -- those exercisable by unsecured creditors and those exercisable by secured creditors. As a general rule these remedies are cumulative. Secured creditors can exercise all of the remedies given to them in their security agreement plus any of the remedies available to the unsecured creditor.

The Limitation of Civil Rights Act places limits on the repossession of farm machinery. The provisions of any security agreement must be read with this differentiation in mind. That Act significantly changes the right of secured creditors.

The remedies exercisable by a bank acting under the authority of Section 178 of the Bank Act must also be looked at because there are different time limits and, as a general rule, the farmer has less leeway and must act more quickly when faced with seizures under the Bank Act provisions.

When reviewing these remedies any farmer must keep all time limits in mind. If he is given time periods to do things then he must ensure that he does what he has to do within the requisite time period or he may lose the benefit of the relief. There are many time periods and each must be observed.

2.2 Unsecured Trade Credits

Where an unsecured creditor of a farmer is not able to obtain payment for the goods he has sold, or the money he has lent to the farmer, his first step will be to send a letter to the farmer asking for payment of the debt or loan within a certain period of time. If this does not obtain results, then the creditor may refer the matter to a credit bureau for collection, or a lawyer, or take the matter to small claims court himself.

At this point the farmer should pay the creditor if possible. Most small merchants are subject to the farm financial crisis as are the farmers as these rural businessmen have very often been good enough to extend credit to farmers when the banks or credit unions will not and, as a result, they are particularly relying on the farmers to repay these debts or they, too, will fall victim to demands placed on them by their creditors and banks.

Where the farmer does not pay, the creditor can sue the farmer in one of two courts. Where the debt is $3,000.00 or under the creditor may issue a Small Claims Court Summons which he can serve, or have served on the farmer calling on the farmer to appear in Provincial Court on a specific date to answer the creditor's claim. If the farmer does not appear at Provincial Court on the date specified, the creditor is entitled to judgment for the amount of his claim plus service costs on that day. He is

then entitled to register the judgment in the Court of Queen's Bench, and from that point on it has the same effect as if it had been issued from that Court. If the farmer does appear at Provincial Court on that date mentioned on the summons then a date will be set for a trial of the claim.

Where the debt is over $3,000.00 the creditor may issue a statement of claim in the Court of Queen's Bench. Once served, the farmer has 20 days from the date of service of the claim to enter a defence to it. If a statement of defence is not filed then the creditor may obtain a default judgment and then attempt to collect on it. If a statement of defence is entered then the creditor may either move to have the defence struck or proceed to examination for discovery, and set the matter down for trial. Although it is not difficult to file a statement of defence on your own, if you do have a defence to a claim made by a creditor, it is best to have a lawyer review or draft up your statement of defence so that you can be sure that it states what you wish to say in legally precise language and so that the creditor can not move to strike out your statement of defence, if in fact you have a valid defence. If you wish to file a statement of defence in any matter it is best to see a lawyer, even if it is only for a single visit so that you can be sure that your defence will not be stymied by procedural irregularities.

Please also note that where you are served with a statement of claim issued out of a judicial centre other than the one closest to where you reside, you may be entitled on filing a statement of defence to have the court file transferred to the judicial centre nearest to where you reside. This is a matter which you can discuss with the lawyer you have retained to represent you, or whom you are seeing for advice in drafting your statement of defence.

Once a creditor has obtained judgment, he then must find unencumbered articles of personal property which he can seize to sell, or bank accounts which have not been pledged as security for a debt. A creditor will normally search the Motor Licencing Division of S.G.I., the PPSA Registry and the Bank of Canada Registry to find out what vehicles the farmer owns and which are free from encumbrances to seize. Please note that there are certain items which are exempt from seizure under writs of execution. These items are listed in the Exemptions Act, and will be discussed in detail in the Section of this book dealing with the Act.

Where a creditor is not able of his own efforts to find out information regarding the farmer-judgment debtor's affairs he may arrange for a judgment debtor examination. This is a recorded examination of the debtor taken under sworn oath. The creditor is entitled to ask questions of the debtor as to his present means of satisfying the judgment and any dispositions which he has made of any real or personal property since the date that the creditor lent money or sold goods to the farmer to the date of the examination.

The method of compelling the attendance of a judgment debtor for one of these examinations is to serve him with a subpoena to appear for the examination at the court house at the judicial centre nearest to where he lives, and the proper amount of conduct money to pay for the trip. If the farmer does not attend after a proper service, then the creditor may bring a notice of motion to the court for a warrant of committal for contempt of court in disobedience of writ of subpoena. Therefore, when served with a subpoena for a judgment debtor examination, it is best to either attend or seek legal advice as to what you should do. Such a document is not to be taken lightly.

Another remedy which a creditor may use is a garnishee. The statute authorizing the issuance of garnishees is the Attachment of Debts Act. After obtaining judgment a creditor may issue a garnishee summons against any person indebted to the farmer-judgment creditor. As well, a creditor may garnishee bank accounts or wages.

There is, however, a limit to the amount which can be garnisheed from wages. The judgment debtor is entitled to the first $550 of his wages each month plus a further sum of $100 for each person who is dependant upon him. Dependants may include wife, husband, brother, sister, parents, grandparents, children under 16, over 16 but in school, or unable to earn a living by reason of mental or physical disability. Only amounts earned above that each month are garnisheeable. There are, however, certain debts which have priority over the exemptions. These are court ordered maintenance for spouse and children, separation agreement debts, hospital bills and bills for board and lodging. It should be noted that there is now a method under the Act to garnishee the wages of federal and provincial civil servants.

There are also certain circumstances under which a garnishee may be issued against bank accounts or sums due to a debtor under a contract, but not wages, before judgment is obtained. This is where the creditor alleges that his claim is for a debt or a liquidated demand. There are very strict legal procedures to follow when this process is used because it has the extraordinary effect of tying up a person's money before judgment and as a result a person who is the subject of such a process should see that they get legal advice immediately. If the farmer-debtor does not enter a defence in the 20 day period after he has been served with the statement of claim and garnishee, then the creditor may obtain default judgment and have the money immediately paid out of court to him (the creditor).

When a farmer is the subject of a garnishee, or for that matter any legal papers and he does not know what to do, it is always best to see a lawyer.

Where a judgment creditor has directed the sheriff to seize personal property pursuant to a writ of execution and that personal property has been seized by the Sheriff, it can not be sold without the sale being advertised for at least 10 days by public notice thereof, describing the property to be sold, copies of which notice shall be posted in the offices of the local registrar and the Sheriff and at least five public places in the locality where the property is to be sold and, at the discretion of the Sheriff, inserted in short form in a newspaper published or circulated in the locality where the sale is to take place.

Where a judgment creditor has directed a Sheriff to seize grain in satisfaction of his judgment, the grain can not be sold until it has been harvested and threshed and all charges for harvesting, threshing, taking and removing have been paid, and the farmer has claimed any portion of the grain or other crops which he is entitled to by virtue of the Exemptions Act. Where the grain has been seized from a member of a co-operative association, whereby the farmer-member is under contract to deliver the grain to the co-operative, the Sheriff shall sell the grain so seized through the co-operative.

As a final step a judgment creditor may bring an application to have some of the farmer's unencumbered lands sold to satisfy the judgment. This is a long and complicated procedure which can take place only after the expiration of a year from the date that the writ of execution was placed in the hands of the Sheriff, and no payments have been made on its account by the judgment debtor to the judgment creditor. As a practical point, these sales are now halted by the Farm Land Security Act so it is doubtful that there will be many of these sales proceeding in the near future.

2.3 Repossession of Farm Machinery and Other Personal Property Under Chattel Mortgages and Conditional Sales Contracts

There are two statutes which must be considered when looking at the repossession of any kind of personal property under any kind of security agreement in a farming situation. These are the Personal Property Security Act (PPSA) and the Limitation of Civil Rights Act (LCRA).

Prior to being able to repossess items given as security under any form of personal property security agreement, the creditor must know that the farmer has failed to live up to his obligations under the agreement. The most obvious obligation that the farmer has is his duty to pay for the goods, or repay the money which he has borrowed in the amounts and at the times specified in the security agreement. But because the chattel mortgagee or the vendor under a Conditional Sales Contract is in law the owner of the goods in the possession of the farmer, there are also specific obligations imposed upon the farmer depending upon the nature of the collateral. He may have a duty to insure vehicles, care for animals, see that the items are not seized by creditors or make an assignment into bankruptcy. These and other breached obligations may give the creditor the right to seize collateral from a farmer. The only way that a farmer can see what obligations he has in addition to repaying monies borrowed during the currency of a security agreement is to read it. The best time to read the agreement is before it is signed. If there are portions of the agreement that the farmer does not understand, he should not be embarrassed to ask his banker to explain the agreement clause by clause. Most chattel mortgages are written in complicated legalese, and the farmer should not be worried about not understanding his on first reading. There are enough court cases about the interpretation and meaning of these agreements to show that greater minds than his have been often times confused as to the meaning of these clauses. By reading these agreements before signing, or after if not done before, the farmer will be able to see what his obligations are under them.

Once the farmer has failed to meet his obligations under a security agreement such as a chattel mortgage or a conditional sales agreement, the secured creditor may take action to seize the collateral. The method that the creditor uses to seize the collateral will depend on the nature of the items being seized. As a general rule, the creditor is entitled to use any remedy stated in the agreement, or under the PPSA, and may simply instruct a bailiff to seize the collateral and he will do so.

However, there is a very important exception to this rule. The Limitation of Civil Rights Act states that a particular procedure for seizure of certain items must be followed. The items to which this procedure applies are:

(a) an implement to which the Agricultural Implements Act applies,
(b) a motor vehicle classified by the Highway Traffic Board in regulations made under the Vehicles Act as a farm truck or a special farm truck and registered under the Vehicles Act as such,
(c) cream separator,
(d) a stove,
(e) a heater,
(f) a sewing machinery,

(g) a refrigerator or a freezer or a unit that is a combination of a refrigerator and a freezer,
(h) a snowmobile, as defined in the Vehicles Act, that is used by a farmer in connection with farming operations.

The creditor must first serve a Notice of Intent to Take Possession in duplicate on the farmer. A copy of the notice is attached as Schedule 1 to this chapter. The notice sets out the date of the agreement, the amount owing under it and the items proposed to be seized. Also attached is a form which the farmer may sign and take to the Local Registrar of the Court of Queen's Bench at the judicial centre nearest to where he lives.

If the farmer does not request a hearing before a judge of the Court of Queen's Bench within 30 days of the date that the Notice of Intent to Take Possession was served on him, then the secured creditor may take possession of the items or vehicles named in the notice.

If the farmer does request a hearing, then a date for the hearing will be set. At the time of the hearing the judge can hear evidence from both the debtor and the creditor as to whether or not the vehicle or implement should be immediately repossessed. The factors which the judge may take into consideration in adjourning the application and allowing the farmer time to pay, or making the Order for Possession effective only after some period of time are as follows:

(a) whether or not the farmer has substantial or any equity in the machine,
(b) whether or not the machinery is necessary for the farming operation,
(c) whether or not the farmer is trying to pay off the balance owing or is attempting to find refinancing to pay out the loan.

Please note that this is not the forum to request that the order for possession be adjourned or dismissed by reason of the fact that the machine is allegedly defective. A recent Saskatchewan case has held that is it not a proper ground to request relief from forfeiture of the machinery. If a farmer has a complaint about the performance of his farm machinery, he should take some positive step such as suing the vendor for breach of contract. He should not expect to be able to keep the machine without paying for it by reason of some alleged defect.

Where the judge finds in favour of the farmer on one or more of these factors, he may make the order allowing possession but postpone its effective date for some period of time. Whether or not the order will be made effective immediately or postponed will depend on the information put before the court. In this regard if a farmer does request such a hearing, he should check with the local registrar of the court at least two weeks in advance to see whether or not he will be able to give spoken evidence or if the matter will be heard on the basis of affidavit evidence (typed sworn statements). In either case, the farmer should bring any documents he will be relying on to court. It may also be of benefit to him if he will not be using the services of a lawyer to write out everything that he wishes to say prior to court so that he can check it and see that he does not miss anything he wishes to say.

If the farmer has not requested a hearing in the 30 day period and the creditor has not picked up the implement or vehicle, he can still send in the request for a hearing up to the date of seizure.

Where the farmer has not requested a hearing and the implement is seized, he will be served with another form which will tell him that he has the right to request a hearing before a judge as above stated. A copy of this Form C is included as Schedule 2 to this chapter. This right to a hearing continues until the implement is disposed of. In any event, the creditor can not dispose of the implement or vehicle until 30 days after the Form C has been served on the farmer.

Where a creditor seizes or disposes of an article to which this procedure applies in contraventior. of the procedures laid down in the Act, the effects are as follows:

(a) the agreement is ended,
(b) the debtor is released from all liability under the agreement,
(c) the debtor is entitled to recover from the secured creditor in an action in court all monies paid to him under the agreement or under any other security given by him in respect thereof.

The LCRA does provide some protection to the farmer who is in the position of having his farm machinery repossessed. However, it should be noted that there are specific time limits on the right to a hearing under the Act. As a result, the farmer must take action within the time periods set under the Act.

No individual farmer is able to contract out of the protections afforded to him under the Act, but it should be noted that farming corporations may waive the protection of the Act at the time that they enter into a security agreement. Therefore, any security agreement to be signed by the corporate officers should be read to see whether or not it contains a waiver of the LCRA, and if it does then after default under the agreement, the secured creditor can repossess without the necessity of issuing any of the forms or allowing the corporate farmer the benefit of a hearing either before or after a seizure.

2.4 Repossession of Collateral Under Part 5 of the PPSA

Where a farmer has executed security agreements pledging collateral which is not covered by the repossession procedure of the LCRA, or where a farming corporation has waived the protection of the LCRA, or where a farming corporation has waived the protection of the LCRA, the secured creditor's remedies are those that are allowed in the security agreement, subject to Part 5 of the PPSA.

The secured creditor may direct a bailiff to seize the collateral in any fashion permitted by law once the farmer has failed to meet his obligations under the security agreement. He may also sue for any balance due under the agreement at the same time. It should be noted that where the collateral is equipment and the security interest has been perfected by registration, the bailiff may render the equipment unusable without removing it from the farmer's premise and the secured creditor is deemed to have taken possession of the collateral. He may also dispose of the equipment on the farmer's premises if he wishes.

The methods of disposing of the collateral available to the creditor are by public or private sale at any commercially reasonable time of day or place as a whole or in commercial units or parts and if the security agreement so provides, he may lease the collateral or sell it by deferred payment.

Before a sale can be made, however, a notice does have to be served on the debtor and any person with a registered security interest in the collateral. This notice must be served not less than 20 days prior to the disposition of the collateral and contains the following information:

(a) a description of the collateral,
(b) the amount required to pay out the agreement,
(c) the amount in arrears or the terms of the agreement the debtor has breached,
(d) the expenses of recovery of the collateral,
(e) a statement of the amount required to redeem the collateral,
(f) a statement of the amount required to reinstate the agreement,
(g) a statement that unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of,
(h) the date, time and place of any public sale or the date after which any private disposition of the collateral will take place.

An example of this type of notice of repossession is appended to the end of this chapter as Schedule 3.

This notice does not need to be served where the goods are of a perishable nature, or the goods have to be disposed of immediately or their value will decrease, or the cost of care of the collateral is disproportionately large relative to its value.

Once the collateral is sold and there is a surplus of money left after payment of the debt, then the balance of the money will be paid to subsequent holders of registered security interests in the collateral, anyone who has served notice of their interest in the collateral, and finally if there is anything left over, the balance will be returned to the farmer.

It should be noted that the secured creditor is not required to sell the collateral and may elect to retain the collateral if he serves a notice on the debtor which tells the debtor of his intention to do so. The farmer may within 15 days of the receipt of the notice make an objection in writing to the creditor and the creditor will be required to dispose of the goods or apply to court for an order to allow him to retain the collateral.

2.5 Repossession of Cattle and Grain Under Security Agreements

Cattle and grain are by virtue of their nature a special type of collateral. In Chapter 1 it was noted that there were special rules for the attachment of a security interest in cattle and grain. A secured creditor can not seize cattle or grain and sell them without giving the farmer the required 20 days notice of disposition. The same notice which is served on the farmer for the repossession of collateral other than farm machinery must be served on him when the creditor proposes to dispose of grain or cattle. Where cattle have been seized, the secured creditor is required to hold them for a period of 20 days and during that period of time he has to look after them and see that they are fed. He is required to use reasonable care in the custody and preservation of any collateral in his possession under the Act. However, he is entitled to add on the cost of caring for and feeding the cattle during the 20 day period to the amount required to be paid by the farmer if he wishes to redeem the cattle or, if the cattle are sold, these costs taken out of the sale price. With some types of grain such as barley or oats the secured creditor may sell them on the open market as feed. With other types of grain such as wheat, the creditor will have to obtain the co-operation of the farmer to sell the grain as it has to be sold under his permit book.

2.6 Repossession Under the Bank Act Section 178

The Bank Act is a statute enacted by the Federal Government. Section 178 of the Act enables banks to lend money to farmers for specific purposes. A farmer must if he wishes to know what his obligations are under such a loan, read the agreement he has signed and the provisions of the Bank Act. Provincial statutes such as the Personal Property Security Act and the Limitation of Civil Rights Act do not regulate the bank's remedies under these loans and security agreements. The Bank Act is an exhaustive code of the farmer's obligations and the bank's remedies after the farmer's default under the terms of a loan given by a bank under the authority of Section 178.

Section 178(3) gives the bank the power to take possession of property covered by Section 178 security. The following actions by a farmer give the bank the right to take possession of the secured property:

(a) Non-payment of any of the loans or advances for which the security was given,

(b) Failure to care for or harvest any crop or to care for livestock covered by the security,

(c) Failure to care for secured property such as machinery and farm electrical systems,

(d) Any attempt, without the consent of the bank, to dispose of any property covered by the security or,

(e) Seizure of any property covered by the security by other persons or creditors.

In the case of crops the bank may harvest them or thresh them, and in the case of livestock, care for them and the bank is given the authority to enter upon the farmer's land to do so.

In addition to these powers the bank has all the powers given to it under the security agreement, such as appointing a receiver to manage or sell off the secured property. There is some question as to whether or not the procedure for taking possession of farm machinery under the Limitation of Civil Rights Act is applicable to seizures of farm machinery under the Bank Act. Due to the legal presumption that in areas of overlapping legislation, the federal law is paramount, these provisions probably would not apply. This is a point which has not been tested in court here. As a matter of policy some of the banks do follow the procedure in that Act and some do not when seizing farm machinery under Bank Act security.

The standard method of seizure under the Bank Act is to have a private bailiff serve a notice demanding immediate payments of arrears of loans, or their full amount or remedy some other breach of the security agreement. However, in some cases where there is a belief that the security is jeopardized by lack of care or that it may disappear, it may simply be seized by a bailiff under the bank's authority.

The requirements for notice before sale also are different from those under the Personal Property Security Act. They are found in Section 179(4) of the Bank Act. They do not contain any of the information required under the PPSA. As well, the time periods are shorter. Sales of property other than livestock will be by public auction after 10 days notice by registered mail to the farmer and for livestock by public auction after publication of an advertisement of the sale at least two days prior to the sale in two newspapers published in or nearest to the place where the sale is to be made stating the time and place thereof.

The Exemptions Act is another provincial statute which limits the rights of a secured creditor to seize certain items where the security was not given for the purpose of acquiring the goods.

This is more fully explained in a subsequent chapter. However, this protection from seizure does not extend to Bank Act loans. Although Section 178 reads in part as follows:

"...but security taken under this paragraph is not effective in respect of agricultural implements that, at the time security is taken, by any statutory law that is then in force, are exempt from seizure under writs of execution and the farmer is prevented from giving as security for money lent to him..."

The only Act exempting agricultural implements from seizure is the Exemptions Act of Saskatchewan. There is a similar act in each province. However, there is nothing in that Act or any other which prevents the farmer from giving these items as security, so as a result there is no exemption from seizure under the Bank Act, because there is not proper integration between the federal and provincial statutes. As a matter of good will the bank may allow the farmer to retain those agricultural implements which he would be entitled to retain under the Exemptions Act, but on a strict reading of the Bank Act it is not required to do so. In any event where the farmer is faced with a seizure under the Bank Act he should claim these exemptions, as until there is a clear court ruling on this point, he may be entitled to this exemption.

2.7 Tracing Proceeds of Secured Collateral by a Creditor

Under the Personal Property Security Act where a creditor is given security on collateral, he also has a continuing security interest in the proceeds of sale unless the secured creditor expressly or impliedly authorized such dealing. The proceeds are defined in the Act to include identifiable or traceable personal property in any form such as cheques, cash, monies on deposit in bank accounts, etc.

The creditor may therefore trade the proceeds to the farmer's bank account and use a garnishee to seize the money, or if the money can be traced to another person's that account may also be garnisheed.

2.8 Actions by Creditors to Restrain Disposition of Property by a Farmer to Relatives or Selected Creditors

A secured creditor or for that matter any other creditor may sue a debtor under the Fraudulent Conveyances Act where the farmer disposes of real or personal property with intent to hinder, delay or defraud his creditors. The conveyance can be declared void as against his creditors unless it can be demonstrated that the purchaser bought the goods in good faith and had no knowledge of the farmer's intent to defraud his creditors. Simply paying the farmer debtor a fair price in such circumstances is not enough. The remedy may be used by a secured creditor where he has failed to register his security so that it would not come to the notice of the purchase, or by a creditor who is attempting to prevent the farmer from fraudulently disposing of unencumbered goods.

The Assignments and Preferences Act is intended to prevent persons who are insolvent or unable to pay their debts from transferring or assigning real or personal property to one of their creditors in priority to others. Where such a transfer is not made for the purpose of securing the present loan of money, and it has the effect of hindering, delaying or prejudicing any of his creditors, then the onus of disproving the intent to defraud is placed upon the debtor and creditor receiving the benefit of the transfer of the real or personal property. A creditor may use an action in Court under this statute again, to have a transfer of real or personal property declared to be null and void where the debtor has made an arrangement to pay one creditor in priority to others when he is insolvent or unable to pay his debts in full.

These two statutes are intended to prevent any person from disposing of their unencumbered assets in such a fashion as to defraud one or all of their creditors.

2.9 Repossession of Mobile Homes

Where a secured creditor wishes to repossess a mobile home he can not use the procedure set out in the PPSA. Instead there is a specific procedure for repossession of mobile homes outlined in the Distress Act. Before a house trailer can be seized, the secured creditor must give 30 days notice in writing to the owner of the mobile home of his intention to retake possession of it. The notice must contain the following information:

(a) A description of the house trailer sufficient to enable it to be identified.

(b) The sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement and a brief description of any other provision of the security agreement for the breach of which the secured party intends to dispose of the collateral.

(c) A demand that the amount as stated in the notice be paid or that the breach of the contract be remedied, if it is capable of remedy, within 30 days after the day on which the notice is given.

(d) A statement that if the breach is not remedied within the 30 day period the house trailer may be repossessed by the secured party.

(e) A statement that if the trailer is removed from a place where it is situated at the time of the giving of the notice without the written consent of the secured party, the person removing the house trailer is liable on summary conviction to a fine not more than $500.00.

Another difference is that the secured party can not simply authorize a bailiff to go and repossess the mobile home. No house trailer can be seized or sold except by the Sheriff or a person duly authorized by a Sheriff for that purpose. Prior to seizing or granting the authority to seize the Sheriff will demand proof that the secured party has given the required notice or that he has taken all reasonable steps to give such notice. He may also request to be indemnified as to damages and costs by the secured party.

Once the debtor fails within the 30 day period mentioned in the notice to pay the amount owing or remedy the breach specified in the notice, the secured party may, using the services of the Sheriff or his appointee repossess the house trailer. Once possession has been taken by a secured party he is required to give the same

notice of disposition of the mobile home as he would be required to give for the disposition of any other type of collateral under the PPSA. That notice and the required information contained in it have been previously reviewed in this chapter.

2.10 Appointment of Receivers

The appointment of a receiver is one of the remedies which a secured creditor is given under the terms of many security agreements on personal property. As a general rule a receiver is entitled to take over possession of all property secure under the agreement. However, because there is a specific procedure for taking possession of farm machinery under the Limitation of Civil Rights Act, it is not common for receivers to be appointed where the debtor is an individual farmer and the bulk of the collateral is farm machinery. However, where the collateral is livestock and equipment other than farm machinery, the secured party may appoint a receiver who will step in to take possession of and dispose of the collateral. A receiver may also be appointed to dispose of farm machinery where the debtor is a farm corporation which has waived the protection of the Limitation of Civil Rights Act.

A receiver is a person appointed by the virtue of some power to appoint contained in the agreement or by a court to collect and receive rents, proceeds and profits of real and personal property and to distribute them among the persons entitled thereto. There are two usual reasons for the appointment of a receiver. The first is where it is necessary to appoint a receiver in order to allow a person who has rights over collateral in priority to others to get the benefit of that priority and to preserve the property pending its sale in situations where the ordinary legal remedies are defective or secondly where it is necessary to appoint a receiver to preserve the collateral from danger. A common occurrence of this nature is where a secured creditor feels that a farmer is not caring for livestock which is held as collateral under a security agreement and he either fears that the farmer will dispose of the livestock or that the farmer does not have sufficient funds to properly feed and care for the cattle.

Before a receiver can be appointed, the farmer must be in breach of some obligation under the security agreement. Further, the breach of obligation must not be trivial in nature. There are other practical considerations which a secured creditor will take into consideration before appointing a receiver. It may be more advantageous from a practical point of view for the secured party to simply seize personal property secured under the agreements or commence a foreclosure action against farm lands. It must be noted, however, that the appointment of a receiver in situations where the Farm Land Security Act intervenes, will be subject to that Act and where a mortgage and other security collateral to it are executed by a farm corporation in the form of a debenture with land as security plus a floating charge on personal property, then the secured creditor will have to take into account the effect of the Farm Land Security Act.

The powers given to a receiver appointed pursuant to a security agreement are derived solely from the agreement. Therefore, a farmer who has executed such an agreement and is placed in receivership should immediately read his agreement over to see what powers the receiver has. The courts in Saskatchewan will not appoint a receiver under the Personal Property Security Act or under the Business Corporations Act unless it is necessary to allow a receiver-manager to more effectively carry out his duties or unless the court appointment would place parties other than the secured party in a better position.

Any adult person who has the capacity to contract may be appointed as a receiver but as a practical point usually a large accounting firm is appointed as a receiver. Persons acting as a receiver without proper experience or education could be liable in a court action for their negligence.

The first step which a secured party prior to the appointment of a receiver under a security agreement is to demand payment or rectification of some act of default under the agreement. Some reasonable notice must be given to the debtor and he must be given the opportunity to remedy the default. Many secured creditors like to work as fast as possible. However, the debtor is entitled to a reasonable notice of the default and be given a reasonable amount of time to remedy the default. The court in determining the reasonableness of the notice given will look at the amount of the indebtedness, the risk to the security holder and the previous relations of the creditor and the debtor. Factors such as a long working relationship or persistent defaults on the part of the debtor will influence the court in deciding whether or not reasonable notice has been given prior to the appointment of the receiver.

In certain circumstances a secured party may appoint a receiver-manager. The receiver-manager may carry on the business of the debtor in order to protect the interest of those on whose behalf he was appointed. There is a duty of care imposed on the receiver-manager under the Business Corporations Act of Saskatchewan. He is required to act honestly and in good faith and to deal with the property of the corporate debtor in his possession in a commercially reasonable fashion.

The methods of sale that a receiver may use are:

1. By private sale,
2. By public auction,
3. By tender.

Receivers are bound to give the same notice of disposition of property to the debtor and other secured parties as any other secured creditor is required to give under the Personal Property Security Act. This notice is to be served as previously stated 20 days prior to the date of disposition of the collateral.

This is only a very brief overview of the law of receivers. This is a very complicated area of the law and it is not possible to give an indepth analysis of it in such a short space. If a farmer is placed into receivership by a creditor he should see that he does obtain competent legal advice regarding the validity of the appointment of the receiver and the steps which a receiver may take to dispose of property covered by the security agreement appointing the receiver.

Schedule 1

Notice of Repossession of Farm Machinery

Form A
(Section 21)

Part I
Notice of Intention

To: Fred Farmer

Take Notice

1. That on account of your failure to make the payment due under the agreement, particulars of which are set out in Paragraph 6, I intend to take possession of the article listed as security under the agreement.

2. That if you object to my taking possession of the article and apply for a hearing by a judge of the Queen's Bench Court, I am prohibited by the Limitation of Civil Rights Act from taking possession of the article until authorized by the judge.

3. That an application for a hearing by a judge shall be made:

   (a) by exparte application to a judge of the Queen's Bench Court,

   (b) by serving part II of this notice, completed and executed by you, on the local clerk of the Queen's Bench court, or

   (c) by serving a written request for a hearing on the local clerk of the Queen's Bench Court.

   At the judicial centre that is nearest the place where you reside or where the agreement, pursuant to which a security interest was taken in the article or sold and in respect of which this application is made, was executed by you or, if you do not reside in the province and did not execute the agreement in the province, at the judicial centre that is nearest to the place where the creditor resides or executed the agreement.

4. That unless you apply for a hearing by a judge I may after the expiration of thirty (30) days from the date on which this notice is served on or received by you, take possession of the article.

5. That if I take possession of the article after the period of time mentioned in paragraph 4 without a hearing by a judge you may apply for a hearing by a judge in the manner mentioned in paragraph 3 within thirty (30) days after the date on which a Notice of Possession is served on or received by you.

6. (a) Repealed. 1979-80 c. 29, s. 9
   (b) Date of execution of agreement by debtor: June 13, 1982
   (c) Place at which agreement executed by debtor: Any Place Saskatchewan
   (d) Particulars of default:
   amount due: $24,532.00
   date due: June 13, 1985

   (e) amount due under agreement as a result of failure by debtor to discharge total indebtedness: $24,532.00

   Further take notice that I intend to take possession of the following articles referred to in the agreement:

   1982 Maxicom Four Wheel Combine Serial Number-4353627

   Further take notice that my address for service of a notice of hearing is:

   X Bank
   1312 4th Street
   Any Place, Saskatchewan
   Attention: S. M. Smith-Barnes

Dated at Any Place in the Province of Saskatchewan this 15th day of December 1985

X Bank Per

Part II
(Section 23)

Request of Hearing

To: The Local Registrar of the Court of Queen's Bench Judicial Centre of Regina

You are hereby requested to fix a time and place for a hearing by a judge with respect to the Notice of Intention set out above.

At the time the Agreement was executed by me I resided at:

Box 23
Any Place Saskatchewan

I now reside at:

Box 23
Any Place Saskatchewan

Dated at Any Place in the Province of Saskatchewan this 15th day of December 1986

Debtor

Schedule 2
Form C
(Section 29)
PART I
Notice of Possession

To: Fred Farmer

Take notice:

1. That a notice of intention to take possession of the article hereinafter mentioned was served on you personally (*or* received by you by registered mail) on the 30th day of July, 1986.

2. That a period of 30 days has elapsed since the day on which the notice of intention mentioned in paragraph 1 was served on you.

3. That as no notice of an application by you for a hearing by a judge has been served on me during that period of 30 days, I hereby take possession of the following article (*or* articles) and I will remove them forthwith.

4. That if you object to my taking possession of the article (*or* articles) and apply for a hearing by a judge within a period of 30 days after the date on which a notice of possession is served on or received by you *The Limitation of Civil Rights Act* prohibits me from disposing of the article (*or* articles) until authorized to do so by a judge.

5. That an application for a hearing by a judge shall be made within 30 days after the date on which this notice is served on you in the case of personal service thereof, or on which this notice is received by you if it is served by registered mail:

   (a) by *ex parte* application to a judge of the district court;
   (b) by serving Part II of this notice, completed and executed by you, on the local clerk of the district court; or
   (c) by serving a written request on the local clerk of the district court;

   at the judicial centre that is nearest the place where you reside or where the agreement, pursuant to which a security interest was taken in the article or sold and in respect of which this application is made, was executed by you or, if you do not reside in the province and did not execute the agreement in the province, at the judicial centre that is nearest to the place where the creditor resides or executed the agreement.

6. That unless you apply for a hearing I may, after the expiration of a period of 30 days after the date on which this notice is served on you or received by you by registered mail, dispose of the article (*or* articles).

7. That particulars of your indebtedness to me are as follows:
   (a) Repealed. 1979-80, c.29, s.9.
   (b) date of execution of agreement by debtor ....Mar. 30, 1984.....
   (c) place at which agreement executed by debtor .....Anywhere, Sask.....
   (d) particulars of default:
   amount due ...$10,000.....
   date due .....June 1, 1986.....
   (e) amount due under agreement as a result of failure by debtor to discharge total indebtedness .....$40,000.....

8. That my address for service of a notice of hearing is
   Dated at Anywhere in the Province of Saskatchewan this day of , 19 .

.....
Creditor

Schedule 3

Notice of Sale Under the Personal Property Act
(Items Other Than Farm Machinery)

To: Fred Farmer
Box 23
Any Place, Saskatchewan

Dear Sir:

Notice of Sale or Other Disposition

You are hereby notified that the Bank will sell or otherwise dispose of the following collateral pursuant to the security agreement dated the 15th day of June 1983, with Fred Farmer (the "Debtor") who is in default.

(a) Collateral subject to disposition:
1-1982 Ford Villager Station Wagon
Serial Number-PR 4536372894857

(b) Disposition will be by:
private sale or otherwise after the 20th day of December 1985

(c) The amount required to satisfy the obligations secured is $15,000.00, this as of December 1, 1985. Thereafter there will be interest charges.

(d) Plus the costs for retaking, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses authorized by the security agreement and not prohibited by law, incurred by the Bank.

(e) The amount actually in arrears is $3,000.00.

(f) You may redeem the collateral by paying the Bank at its Any Place Branch the amounts mentioned in paragraphs (c) and (d) above at any time prior to the Bank entering into a contract for the sale or other disposition of the collateral.

(g) The debtor may reinstate the security agreement by paying the amount or curing the default mentioned in paragraph (d) above at the Bank at its Any Place Branch at any time prior to the Bank entering into a contract for sale or other disposition of the collateral.

(h) Unless the amounts mentioned in paragraphs (c) and (d) above are paid as aforesaid and the collateral is redeemed or unless the amounts mentioned in paragraphs (d) and (e) are paid as aforesaid and the security agreement is reinstated, the collateral will be sold or otherwise disposed of by the Bank and the debtor will be liable for any deficiency resulting from such sale or other disposition of the collateral.

The X Bank by

S. Smith Scott
Manager

Chapter 3

3.1 Introduction

In this chapter a number of statutes enacted by the Government of Saskatchewan will be examined. The statutes which will be looked at will be:

1. The Limitation of Civil Rights Act
2. The Farm Security Act
3. The Land Contracts Actions Act
4. The Queen's Bench Act
5. The Exemptions Act

These statutes have provisions which assist persons in financial difficulty. Their purpose is to limit the remedies of secured or unsecured creditors attempting to collect on debts or judgments or take possession of secured collateral situated in the province of Saskatchewan. Some of these statutes are of a general nature and apply to all persons in the province but some of the provisions of the Limitation of Civil Rights Act and all of the provisions of the Farm Security Act are of a benefit to farmers only.

3.2 The Limitation of Civil Rights Act

This is the most important of all of these statues. It has provisions which affect creditors attempting to bring actions on mortgages of land, leases of land, agreements for sale on land, chattel mortgages, and conditional sales contracts.

(a) Its Effect on Mortgages of Land, Leases and Agreements for Sale

In any mortgage or agreement for sale there is a personal covenant obliging the purchaser or the mortgagor to pay the amount owing under the agreement for sale or the mortgage. Section two of the Act, however, limits a vendor under an agreement for sale to cancelling the agreement for sale and reselling the land or a mortgagee to foreclosing on the property and taking it back and selling it.

When a farmer executes an agreement for sale of land or a mortgage, he covenants with the vendor or the mortgagee to pay the amount of money owed under the agreement with interest as set out by the terms of his agreement. Where the farmer fails to pay the amounts due under the agreement as they come due the mortgagee or vendor has two remedies according to the terms of the agreement:

1. He can bring an action on farmer's personal covenant to pay contained in the agreement to pay the amount owing under the agreement.

2. He can bring an action to retake possession and regain ownership of the land for agreements of sale. This remedy is called an action for cancellation of the agreement of sale and for a mortgage it is called a foreclosure of the equity of redemption action.

A creditor may also under the terms of his agreement with the farmer use both remedies at the same time so it is possible according to the terms of an agreement of sale or a mortgage for a vendor or a mortgagee to sue the purchaser or the mortgagor on his personal covenant to pay the full amount of the debt after there has been a sale of the land and the sale proceeds were not sufficient to pay out the debt.

This is not the case in Saskatchewan in certain cases because of Section 2 of the Act.

In the case of agreements for sale of land the effect of this Section is as follows:

After the purchaser's failure to pay the amount due under the agreement for sale the vendor's remedies are restricted to one. He can only bring an action for cancellation of the agreement for sale and retake possession of the land or sell it himself. He may not sue the purchaser of the land on his personal covenant to pay the purchase price after he, the vendor, has sold the land and the sale price has not been sufficient to satisfy the debt owed by the purchaser to the vendor.

There is a similar provision for some mortgages. Please note the restricted effect of Section 2 which is as follows:

Where the mortgage has been given to secure the purchase price of land or part of the purchase price or where it was given as collateral security for the purchase price of the land the mortgagee is restricted to his right of foreclosure and if after he sells the land the full mortgage debt is not paid, he is not able to sue the mortgagor for the shortfall. It is very important to note that this protection has been restrictively interpreted and it does not apply against third party lenders such as banks or credit unions who loan money to purchasers with the knowledge that it will be used to pay to a vendor all or part of the purchase price of land. In order for this protection to apply, the mortgage must be given back to the original vendor of the land. Therefore, where a chartered bank or other financial institution has obtained a judgment against a mortgagor in a foreclosure action they may register a writ of execution or begin garnishment proceedings against the mortgagor. The case law has stated that in order for the mortgagor to be able to maintain an action on the mortgagor's personal covenant he has to be in a position to reconvey the land upon payment of the land unless it has been sold by judicial sale in the foreclosure action.

It is important to point out that in a foreclosure action a mortgagee may request either judicial sale of the lands or a final order of foreclosure of the equity of redemption which transfers the land into the name of the mortgagee.

Section 6 of the Act states that upon issuance of the final order of foreclosure and vesting of title to the property in the name of the mortgagee, the final order operates in full satisfaction of the debt secured by the mortgage and the mortgagee has no further right to bring an action on the mortgagor's personal covenant in the mortgage.

Therefore, where a mortgagee is requesting an order for foreclosure vesting title to the lands in itself in the mortgage action, there is only a short period of time between the issuance of the order for foreclosure and the final order for foreclosure where the mortgagee may maintain an action on the mortgagor's personal covenant and register a writ of execution or commence garnishment proceedings against the mortgagor to reduce the amount owing under the judgment.

However, where the mortgagee requests judicial sale of the mortgaged property in the foreclosure action, there is a court supervised sale of the property. Where there is a deficiency after the sale, the mortgagee is entitled to enter personal judgment against the mortgagor for that deficiency.

In either case where the mortgagee has filed a writ of execution, Section 4 of the Act entitles the mortgagor to make an application to the court for an order that the writ of execution filed by the mortgagee shall not affect any of the lands or the mortgagor declared by the Exemptions Act to be free from seizure.

These particular protections are complicated. It is best for the farmer to consult with a lawyer concerning his position regarding the remedies which a mortgagee has elected to exercise and how the protections of the Limitation of Civil Rights Act will affect the mortgagee's remedies. This should be done immediately upon being served with the

first document commencing the foreclosure action.

No province other than Saskatchewan has an act similar to the Limitation of Civil Rights Act. After a final order of foreclosure in other provinces, the mortgagee is entitled to maintain its action against the mortgagor's personal covenant so long as it is able to reconvey the mortgaged lands to the mortgagor upon payment of the mortgage debt. This is different from the law in Saskatchewan.

It should be noted for corporate mortgages that a corporation may waive the protections of the Limitation of Civil Rights Act and where the farming corporation has done so in the original mortgage document, so long as the mortgagee is in a position to reconvey the mortgage farm lands to the farming corporation upon payment of the mortgage debt, it is entitled to register a writ of execution against the lands and goods owned by the corporation and try to seize these goods or garnishee the corporation's bank accounts. As a practical point where a mortgagee has obtained a final order for foreclosure, it does not like to hold on to land and it is doubtful that it will do so for very long and this particular situation which I have just outlined will not happen very often.

(b) Other Protections Specifically for Mortgagors

Sections 7, 8, 10, 11 and 13 give protections to mortgagors.
They are:

Section 7 – No mortgage fees other than the preliminary inspection consequent upon an application for a loan or renewal of loan shall be charged to the mortgagor or to the mortgage account.

Section 8 – No mortgage fees, costs or expenses for time and service of bank employees shall be charged to the mortgagor or added to the mortgage account in respect to the collection of monies due and payable under the mortgage by way of commission or expenses of such collection or of getting the mortgagee's share of crop grown on the land in any year where the mortgage is payable by way of yearly crop share and any such provision allowing such cost to be added to the principal money secured by the mortgage is null and void.

Section 10 – A mortgagor shall be entitled to pay overdue monies under the money without notice or bonus payments (a penalty).

Section 11 – No taxes other than land taxes are chargeable to a mortgagor under a mortgage and none other than land taxes shall be added to the mortgage account and any agreement to the contrary is null and void.

Section 13 – Where there is damage or destruction of buildings on mortgaged lands by fire the mortgagor may apply to the Court of Queen's Bench for an order governing the application of the monies received or receivable under an insurance policy in respect of the damage and a judge may make an order directing the application of those monies on the mortgage or in or towards rebuilding, restoring or repairing a building damaged or destroyed or partly damaged or destroyed. This application to court must be made within 60 days after the amount of the loss has been adjusted and 10 days notice of intention to make the application has to be given to the mortgagee.

3.2(c) Protections Under the Act of Chattel Mortgagors and Land Mortgagors.

Section 16 and 17 of the Act apply equally to mortgages and chattel mortgages.

Section 16 states that where a mortgage or chattel mortgage is held as security for more than one debt and monies are paid by the mortgagor or are realized by the mortgagee on sale of secured collateral these monies shall be immediately applied towards payment of one or more of the debts secured by the mortgage and the mortgagee shall immediately notify the mortgagor of the debt to which the monies have been applied unless the mortgagor has previously given directions as to the applications of those monies and the mortgagee has paid them on the debt as he was directed to do by the mortgagor.

Section 17 is a very broad clause which prohibits certain conditions in mortgages or chattel mortgages. The type of clause which it prohibits is as follows:

"The bank may in its sole discretion, declare all or any part of the indebtedness which is not by its terms payable on demand to be immediately due and payable, without demand or notice of any kind in the event of default or if the bank considers or deems itself insecure for any reason whatsoever."

This section states that no chattel mortgage or agreement collateral to a chattel mortgage shall contain a provision the application of which depends merely upon the opinion of the mortgagee that a circumstance or state of things exist which affect his security and any such provision is null, void and of no effect. The clause is an example of the type of clause which is often contained in chattel mortgages which is rendered null and void by this section.

3.2(d) The Effect of the Act on Conditional Sales Contracts

Section 18 of the Act states that when an article of a value of over $100.00 is sold and the vendor retains a lien thereon for all or part of the purchase price, his right to recover the unpaid purchase money is restricted to his lien upon the articles sold, and his rights to repossession and sale of those articles. This lien upon the articles sold is most commonly found in conditional sales contracts or lien notes given by a purchaser of farm implements to a dealer in farm implements under the Agricultural Implements Act.

This provision does not apply to certain sales. The relevant exceptions are:

(a) A sale of land with chattels included in the sale,

(b) An agreement for sale of livestock,

(c) The sales of goods in bulk within the meaning of the Bulk Sales Act,

(d) The sale of an article that is thereafter affixed to realty and to which Section 36 of the Personal Property Security Act applies.

These exceptions cover items which by their nature can be easily lost to a vendor for the purpose of repossession after their sale. It would not be fair to restrict the seller to his right to repossess that portion of the goods which remain after the purchaser has had the opportunity to resell some portion of the goods or they have been attached to land and the vendor has lost his right to repossess them.

The effect of this section is that in the ordinary course of affairs where a vendor sells farm machinery or any other type of personal property other than those to which this section does not apply, the vendor's sole remedy on the purchaser's default will be to retake possession of the goods and resell them. In fact where an article is repossessed and not redeemed or surrendered to the vendor and any money is subsequently paid in respect of the purchase price remaining at the time of repossession or surrender, the purchaser may be entitled to recover that portion of the purchase price by an action in a court of competent jurisdiction (where the amount claimed is under $3,000.00 this will be Small Claims Court and where it is over $3,000.00, the Court of Queen's Bench).

In order to protect a vendor from a malicious or negligent purchaser who has caused serious damage to the articles which he has purchased, this section does not apply to limit the vendor's rights to repossession where the article has been totally destroyed by the wilful act of the purchaser or otherwise or where it has been shown to a court of competent jurisdiction that the purchaser has wilfully damaged the article sold or that it has been damaged by his neglect, or for some other reason it is inequitable that the vendor shall be restricted to his right to repossess and sell the articles sold to the purchaser under the conditional sales contract.

This protection does not extend to chattel mortgages. Where a purchaser obtains financing for the purchase price of the goods from someone other than the vendor then he is liable after repossession of the goods and their sale to pay for any deficiency left after the sale of the goods.

3.3 The Farm Security Act and Its Effect on Mortgages, Leases and Agreements for Sale

The Farm Security Act should not be confused with the Farm Land Security Act. They both affect the remedies of mortgages and vendors under agreements of sale but they are applicable in different situations. The Farm Security Act is one of the oldest acts giving protection to farmers. There are a number of provisions in the Act relating to crop share farm leases which were very relevant a number of years ago but have largely been replaced by the provisions of the Saskatchewan Crop Insurance schemes. These provisions of the Act are notable to read if only to compare with the present protections afforded to farmers, in order to see how far in fact the protections given to farmers have progressed over the years.

These provisions as they relate to crop share farm leases or agreements for sale may be relevant, however, where a farmer has not been able to place crop insurance on leased farm lands. By making a proper application to the Provincial Mediation Board, a farmer may be entitled to retain a portion of the crop share payable to the lessor of the lands where his share of the crop is insufficient to pay all unpaid legitimate costs of harvesting the crop and to provide a necessary living allowance for himself and his family until the next crop year.

The Act also states that notwithstanding any provisions in a mortgage or an agreement for sale of land it shall be deemed to contain a condition that, in the case of crop failure which is defined as a failure of grain crops grown on the said lands to the extent that the sum of money realizeable from the said crops is less than a sum equal to $6.00 per acre sown to grain in that year of the land in any year and by reason only of such crop

failure the mortgagor shall not be required to make a payment of principal to the mortgagee during the period of suspension and any payments of principal which fall due during the period of suspension shall be postponed for one year.

This protection has largely been replaced by the crop insurance scheme but it may be of some benefit to a farmer who has been unable to place crop insurance on his crops and has experienced a crop failure. This protection only postpones the payment of principal due in the year under the terms of the mortgage.

The principal protection for farmers under the Farm Security Act is the protection afforded to the homestead in foreclosures.

The Act states that for certain mortgages, a mortgagee is not permitted to foreclose on the farmer's homestead. The homestead is defined as being the farm residence of the mortgagor and the quarter section on which the residence is situated and other buildings on that land. Where the farmer's residence is situated on an area of 120 acres or less the homestead shall include an additional legal subdivision or additional legal subdivisions adjacent to the quarter section or portion thereof, to be designated by the judge hearing the action, but the homestead with such inclusion shall not exceed 160 acres.

The mortgages to which this protection applies are mortgages of the homestead which were not given for the purpose of securing the purchase of securing the purchase price of the homestead. Mortgages which are given by the Canada Farm Loan Board or the Farm Credit Corporation are also exempted from the protections given to the homestead under the Act.

The effect of the Farm Security Act is that so long as the mortgage is a qualifying one, and the farmer is residing on the homestead and is in fact farming that quarter section of land it will be exempted from any foreclosure proceeding.

3.4 The Land Contracts (Actions) Act and Its Effect on Foreclosures

Before the enactment of the Farm Land Security Act on December 4, 1984 a mortgagee who wished to foreclose on a mortgage of lands in the Province of Saskatchewan, or a vendor of land under an agreement of sale who wished to have the agreement cancelled, had to proceed according to a procedure outlined under the Land Contracts (Actions) Act. It may be that the Farm Land Security Act will be extended for a further period of one year after its expiry on December 31, 1985. If that Act is not extended farmers in financial difficulty will have to understand the procedure under the Land Contracts (Actions) Act.

The mortgagee commenced his foreclosure proceeding by serving a notice on the Provincial Mediation Board stating his intention to take some action for foreclosure under the mortgage. This notice had to contain the following information:

(a) The name of the mortgagor,
(b) The name of the mortgagee,
(c) The legal description of the mortgaged premises,
(d) The breach giving rise to the mortgagee's claim,
(e) The arrears of the mortgage,
(f) The specific relief sought in the foreclosure action,
(g) An address for service of the landowner and all proposed defendants.

At that point the Provincial Mediation Board would contact the proposed defendants and see if there was any method of trying to mediate in the foreclosure action. If a successful mediation was not made within 30 days then the mortgagee was entitled to bring an application at the proper judicial centre for an appointment for leave to commence the action for foreclosure. Once this appointment for leave had been issued, the farmer and the mortgagee were required to appear at court to explain why the mortgagor was unable to meet his commitments under the mortgage into good standing, pay it out or seek alternate financing. At this stage of the proceedings the judge hearing the application for leave to commence the action could adjourn it for a period or periods of up to eight months. In deciding to adjourn the application the judge would take into account such factors as whether or not the mortgagor was a chronic defaulter or whether he has any reasonable possibility of paying out the mortgage or bringing it back into good standing.

If a judge found after adjourning the matter for some period of time up to eight months, that the farmer had been able to pay out the mortgage then he would allow the mortgage to issue a statement of claim in the action. The procedure is identical from that point on whether or not the action was commenced under the Farm Land Security Act and the mortgagee was given leave to proceed under Section 9 of that Act, or if leave to issue a statement of claim was given under the Land Contracts (Actions) Act.

The procedure from this point on is covered in Chapter 2 of this book in the section under the Farm Land Security Act.

3.5 Relief for Mortgagors and Purchasers of Land Under the Queen's Bench Act

Sections 44.8 and 44.9 of the Queen's Bench Act give a judge of the Court of Queen's Bench the power to grant relief to a mortgagor in default under the terms of a mortgage or a purchaser under the terms of an agreement for sale of land. The relief accorded to mortgagors and purchasers is basically the same.

Where a mortgagor has defaulted in making payment of monies due under a mortgage or in observance of a covenant contained in a mortgage in many cases the mortgagee may by reason of such default under the terms of the mortgage accelerate the payment of other portions of the principal money so such portions become presently due and payable. Notwithstanding any provisions in the mortgage to the contrary the mortgagor may at any time prior to the sale or before the grant of a final order of foreclosure perform such covenant or pay such arrears as are in default with costs to be taxed and the mortgagor shall thereupon be relieved from immediate payment of that portion of the money secured by the mortgage which is not actually in arrears at that time (payable by lapse of time is the expression in the statute).

This is a strong protection afforded to mortgagors and purchasers under agreements of sale during the term of their contracts. Once the agreement has expired the protection can no longer be given. These protections were initiated at a time when mortgages were given for long terms such as 15 or 20 years. Unfortunately today many farm mortgages are for terms of one to five years. Once the initial term has expired and the mortgagee refuses to renew the mortgage and demands full payment of the sums owing under the mortgage as of that time, this relief is no longer of any value because all of the monies due and payable under the mortgage have become payable by lapse of time. This relief is, however, of benefit to any mortgagor during the term of his mortgage if he is for some reason unable to meet his obligations under the mortgage for some period of time and the mortgagee demands payment of the full amount of the mortgage or commences a foreclosure action prior to the expiration of the term of the mortgage.

3.6 The Queen's Bench Act and Relief From the Effect of Judgments and Writs of Execution

Under Sections 75-88 of the Queen's Bench Act a judgment debtor may apply to the court for directions regarding payment of monies recoverable under judgments. Where a judgment is entered against a farmer or any other person in Saskatchewan, either at trial or by default if he fails to enter a statement of defence, the person (known as a judgment debtor) may subsequently request that the judge of the Court of Queen's Bench make an order giving directions for payment of the amount recoverable under the judgment at such times and in such amounts as the judge deems fit. The judge may also give such further directions as he deems necessary as to what proceedings, if any, may be taken by way of execution or otherwise as to the enforcement of the judgment and as to when any proceedings allowed by him may be taken by the judgment creditor.

Where a substantial amount of time has expired subsequent to the entry of the judgment and articles have been seized by the sheriff under the authority of the writ of execution taken out by the judgment creditor, the judgment debtor may still apply to the court for an order and the judge may, in addition to giving direction respecting payments of the amount recoverable under the judgment, direct that the goods seized or any of them be released from seizure subject to such conditions as he deems just.

Where the judgment debtor fails to make the payments directed, the judge must immediately make an application to vary the judge's order or the judgment creditor will be entitled to proceed as if the judge had not given any directions regarding payment at all.

These provisions only relate to judgment creditors. They do not limit the actions of secured creditors realizing on their security. A judge acting under these sections can only direct payments be made on a judgment. His power does not extend to affect secured creditors.

The cases on these sections have indicated that a judgment debtor can not simply make an application under these sections to try to prevent a judgment creditor from enforcing his judgment. The judgment debtor must show that he is making a realistic attempt to satisfy the judgment.

3.7 The Exemptions Act and Its Effect Upon Seizures of Personal Property Under Judgments and Security Agreements

Section 2 of the Exemptions Act states that certain real and personal property of an execution debtor and his family is declared free from seizure by virtue of Writs of Execution. This property is:

1. The necessary and ordinary clothing of himself and his family.

2. Furniture and household furnishings and household appliances to the extent of $4,500.

3. Grain, flour, vegetables and meat, where prepared for use or on foot or any of them,

sufficient when converted into cash to provide food and fuel for heating purposes for the execution debtor and his family until the next ensuing harvest.

4. All animals, harness, farm machinery, dairy utensils and farm equipment, including one automobile or one motor truck, that are reasonable necessary for the proper and efficient conduct of the execution debtor's agricultural operations for the next ensuing twelve months.

5. One motor vehicle where it is necessary for the proper and efficient conduct of the execution debtor's business, trade calling or profession; provided that the motor vehicle is not in addition to the automobile or motor truck mentioned in paragraph 4.

6. The books of a professional man.

7. The tools and the necessary implements and office furniture and equipment to the extent of $4,500.00 used by the execution debtor in the practice of his business, trade, calling or profession.

8. Seed grain sufficient to sow all of his land under cultivation at the rate to two bushels per acre, the execution debtor to have a choice of seed, and 14 bushels of potatoes for planting.

9. The crop of the execution debtor to such extent as is sufficient when converted into cash, along with any other means that he may have to pay all unpaid legitimate costs of harvesting the crop and to provide the necessary living allowance for the support of himself and his family until the crop of the following year is about to be harvested and to provide necessary costs of his farming operations until that time. Where an exemption of crops is claimed by the execution debtor and allowed by the sheriff as being necessary, in addition to the exemptions granted by the foregoing paragraphs for the purpose of providing such living allowance or for the purpose of costs of such farming operations, and any article in respect of the purchase of which an exemption of crops is allowed, if purchased before the crop in the following year is harvested, shall be free from seizure.

10. The homestead, provided it is not more than 160 acres; and if it is more the surplus may be sold subject to any lien or encumbrance thereon.

11. The house and buildings occupied by the execution debtor and also the lot or lots on which they are situated according to the registered plan thereof to the extent of $32,000.00.

12. The trailer or portable shack occupied by the execution debtor as living quarters provided that the trailer or portable shack is not in addition to the house and buildings mentioned in paragraph 11.

These exemptions are statutory exceptions to the ancient common law rule that a sheriff might seize and sell all the personal goods and chattels belonging to a judgment debtor which he could find, and which could be sold with the exception of his wearing apparel and perhaps goods in his personal possession.

These exemptions are construed strictly against the debtor because they are exceptions to the general rule that a judgment creditor is entitled to use all steps necessary to realize on his judgment.

The wording of these exemptions also causes difficulties for the farmer and for the sheriff who is attempting to seize goods under the authority of a writ of execution.

Item 4 of the Exemptions Act will cause particular difficulty. It exempts all farm machinery including one motor truck that is reasonably necessary for the proper and efficient conduct of the execution debtor's agricultural operations for the next ensuing 12 months. Past legal cases have stated that something is necessary to a farming operation when it is something which by its absence would destroy the ability of the farmer to perform the functions, the performance of which are necessary for his qualification as being engaged in agricultural operations. Thus if a farmer has more than one of a particular farm machine or the farm machinery which he wishes to retain are not actually necessary for his agricultural operations for the next 12 months then these machines will not be exempt from seizures authorized under writs of execution.

The cases also state that it is the role of the sheriff seizing the goods under the authority or a writ of execution to explain what choices are available to a debtor in claiming his exemptions. This may cause some difficulty for some sheriffs and judgment debtors in a situation where one of them does not understand what is necessary for the judgments debtor's agricultural operations or are otherwise exempted under the Act having regard to that particular judgment debtor's situation.

The Exemptions Act also exempts certain chattels from seizure under chattel mortgages if the chattel mortgage takes security on one or more of those chattels mentioned in paragraphs 1-11 noted in Section 2 of the Act if the effect of the seizure

would be to deprive the debtor of the number or part of the number of the kind of such assets that by virtue of Section 2 of the Act he may hold free from seizure under execution. It should be noted that this exemption is not available if the security agreement secures the purchase price of the chattel given as security under the agreement. If there is a disagreement between the debtor and creditors as to whether or not these provisions serve to exempt assets from seizure under the chattel mortgage or other security agreement then the debtor may apply to the Court of Queen's Bench for an order determining his rights under this section.

It should also be noted that none of these exemptions apply in the case where the execution debtor has absconded or is about to abscond from the Province of Saskatchewan leaving no wife or family behind. They also do not apply executions issued upon judgments or orders for payment of alimony or maintenance by a husband to his wife or former wife or for the payment of maintenance for a child of the execution debtor or judgment founded upon separation agreements.

These exemptions are also not available where the subject matter of the judgment was the item being claimed as exempt from seizure.

Under certain circumstances the debtor may be entitled to retain proceeds from the sale of exempt items. This will only be permitted where the sale was involuntary. Where a debtor voluntarily disposes of items which are exempt from seizure under this Act, the exemption does not extend to proceeds generated from the sale and these are liable to seizure under a writ of execution.

Chapter 4

General Principles Concerning Administrative Boards

All farmers today have had some experience in dealing with administrative boards. Agriculture is a regulated industry and the governmental bodies which are entrusted with the regulation of the industry are often set up as administrative boards.

Any administrative board is established for the purpose of hearing different sides of a dispute and giving a decision concerning the matter being heard before it. In some cases, the decision will not be binding, but will only be in the form of a recommendation. Although all of the boards make some kind of decision they are not courts and their procedures are not as strict as courts. The degree of procedural formality demanded of any administrative board will vary according to a number of factors such as:

(a) The degree of formality of its process outlined in the legislation giving it its powers,
(b) The nature of its powers,
(c) The nature of the interest affected by the Board's eventual decision,
(d) Whether or not the legislation empowering it to make a decision requires it to give a hearing to a person affected by its decision,
(e) Whether or not the persons affected by its decisions are entitled to be represented by lawyers at a hearing of the board,
(f) Whether or not it is required to act judicially in the taking of evidence, and making of its decision (like a court) by the legislation giving it its powers.

There are three administrative boards before which a farmer in financial difficulty could appear. These boards are:

(a) The Provincial Mediation Board,
(b) The Farmers' Counselling and Assistance Board,
(c) The Farm Land Security Board.

None of these three boards are required by their enabling legislation to give a farmer or his creditors a hearing where both parties may call evidence, be represented by lawyers or cross-examine the other's witnesses. These boards are also not bound by the same rules of evidence as courts in making findings of fact and they may make findings of fact concerning the matters before them on hearsay evidence or on unsworn statements. However, where required in the opinion of the board members they may require persons giving evidence before they to do so by way of sworn affidavit or verbally under oath.

There has been a judicial decision holding that the Provincial Mediation Board was not required to give a hearing to persons affected by its decisions in the cases of relief from forfeiture of a lease. However, this is not to say that a court would necessarily extend the same reasoning to the Farm Land Security Board if its decision was questioned in court.

It is very important to remember, however, that a farmer can not win in front of boards like these by relying on technical defences. All of these boards make decisions concerning the financial well-being of a farmer's operations. The most important point of preparation for a farmer before appearing in front of one of these boards, or when meeting with one of its appointees, is to have proper financial records.

Each of these boards has its own preprinted financial statements. A farmer is able to put forward to

the board a realistic picture of his present financial situation and the reasons for his financial difficulties by completing these statements using information from his financial records. A farmer can, in fact, show that there is a coincidence between adverse factors such as recent declining commodity prices and adverse climatic conditions and his present financial difficulties. The closest situation which a farmer will previously have been exposed to in terms of the amount of preparation of financial records which he will be required to produce when appearing before these boards is when he last applied for long term financing. In both situations he has to demonstrate that he has a possibility of meeting his financial obligations as they come due or that at some time in the future he will be able to do so.

There are publications available through Saskatchewan Agriculture showing the steps which should be taken prior to applying for credit and these steps apply equally to preparation for meeting with any of the administrative boards.

Chapter 5

The Administrative Boards and Their Powers

5.1 The Provincial Mediation Board

The Provincial Mediation Board is appointed under the authority of the Provincial Mediation Board Act. It is the oldest of the three boards which will be discussed in this book and it is the one which has a general application. This board is empowered to act in a number of situations to assist debtors. A farmer may be a debtor who will be given assistance under the Act, but the Act's assistance is not limited exclusively to farmers.

A debtor, who may be a person, a partnership, or a corporation may apply in writing to the board to have it intervene and/or meet with him and his creditors and endeavor to bring about an amicable arrangement for the payment of his indebtedness without the necessity of recourse to legal proceedings. The board may be examining the validity of the creditors' claims and the debtor's ability to repay these claims. It may be able to assist the debtor and his creditors to reach an agreement as to the amount and frequency of payment to be made by the debtor to his creditors and this agreement is valid and enforceable at law. This agreement once entered into may alter, modify or rescind in whole or in part the terms of any mortgage, contract, or previous agreement between the parties. It should be noted that such an agreement can not be made enforceable against creditors or a debtor who does not agree to it. However, once the debtor and his creditors have agreed to such an agreement with the assistance of the board as stated, then the agreement shall become valid and enforceable at law.

The board in exercising this power of mediation is not only limited to dealing with the debtor's unsecured creditors but may also deal with secured creditors such as mortgagees. However, it may be difficult as a practical point to get any secured creditor to agree to vary or postpone his security as a part of an overall agreement for repayment of the debtor's debts.

This type of agreement is particularly valuable where the reason for the debtor's failure to pay is poor cash flow. Where the creditors can see that they all will be taking an equal reduction in the amount of their payments over a period of time and the secured creditors will agree not to realize on their security for some period of time, often times the debtor is able to come out of the cash flow shortage period without significant financial loss.

The Provincial Mediation Board Act also states that no proceedings shall be taken to obtain title to land for arrears of taxes except with the prior written consent of the board. Where a farmer or other person is at risk of losing his lands for failure to pay taxes he may contact the board for assistance in dealing with the municipality or setting a further period of time to repay the taxes.

It was also empowered to investigate and mediate between a mortgagor and the mortgagee prior to a mortgagee being able to apply for an appointment for leave to commence a foreclosure action under a mortgage pursuant to the Land Contracts (Actions) Act. Presently for farmers this procedure is not regulated by the Farm Land Security Act.

The board also has powers to prohibit proceedings under the Landlord and Tenant Act for some period of time or prohibit an action by a landlord for recovery of possession of land from a tenant during some period of time or prohibit the execution by a Sheriff of any Writ of Possession during such period of time as the board may order. Such applications may be made by the tenant, any other person or by the board itself.

It should be noted that where a landlord is bringing an action for possession on farm lands from a tenant or bringing other proceedings against a tenant under a farm lease pursuant to the Landlord and Tenant Act, and the tenant applies for an order from the board prohibiting those proceedings the order will apply only with respect to the tenant's residence and other buildings on that land and to the land surrounding those buildings and used in connection therewith not exceeding two acres and any land necessary for reasonable access thereto.

In pursuit of the exercise of its powers the board and its members can make such enquiries as it deems necessary with respect to any matter with its jurisdiction and for the purpose of conducting an inquiry the board shall have all the powers conferred or that may be conferred upon commissioners under the Public Inquiries Act. Those powers are to require persons giving evidence to do so by way of sworn affidavit or under oath.

It should be noted that the board does not have any power to made an order postponing a Writ of Possession or any other proceeding or action taken under the Residential Tenancy Act.

In a recent case it was held that when the board is prohibiting proceedings under the Landlord and Tenant Act pursuant to powers given to it by Section 14 of the Act, it was exercising an administrative function and it was not required to follow the rules of natural justice or to afford the landlord involved a hearing where he give evidence under oath, be represented by counsel and cross-examine other witnesses.

The board procedure is simply stated in Section 15 of the Act. It is given the power to make such inquiries as it deems necessary with respect to any matter within its jurisdiction under this Act and for the purpose of conducting an inquiry the board members shall have all the powers conferred or that may be conferred upon commissioners under the Provincial Inquiries Act. The powers given to commissioners under that Act are to be able to compel witnesses to appear before them and give verbal evidence under oath or to compel witnesses to give evidence by way of sworn affidavit.

5.2 The Farm Land Security Board

This board is established pursuant to the Farm Land Security Act. Its function begins when it receives a notice of intention from a mortgagee to seek an exemption from the provisions of Sections 7 and 8 of the Farm Land Security Act. These are the sections of the Act which prevent the mortgagee from commencing or continuing a foreclosure action against farm land.

There is a prescribed form for the notice. A copy of such a notice is included as Schedule 1 to this chapter. The contents of the notice are prescribed by regulations enacted pursuant to the Farm Land Security Act. The notice must state the relief which the mortgagee is asking for in the foreclosure action, the names of proposed defendants, the legal description of the properties and a number of particulars concerning the mortgage. The particulars which must be supplied with respect to the mortgage are:

(a) The date of execution of the mortgage,
(b) The amount of the mortgage,
(c) The outstanding balance under the mortgage,
(d) The interest rate,
(e) The instalments payable,
(f) The arrears on principal,
(g) The arrears of interest,
(h) The total arrears,
(i) The amounts and dates of all instalments paid during the three years immediately preceding the date of the notice,
(j) The mortgage renewal date.

The procedure under the Farm Land Security Act must also be followed by a judgment creditor who wishes to have land owned by a farmer sold pursuant to a writ of execution. In such cases there are slightly different requirements for the notice. It will provide:

(a) The name of the judicial centre where the application for sale by a Sheriff under a writ of execution against lands will be made,
(b) The name of the execution debtor,
(c) The name of the execution creditor,
(d) The property description of the farm land subject to the writ of execution,
(e) Particulars of the writ of execution including:
  i) the date it was issued,
  ii) the amount of the debt to be collected pursuant to it,
  iii) a copy of the writ of execution.

Upon receiving the notice of intention to apply to the court the Farm Land Security Board is mandated to do three things. These are:

(a) Investigate the financial affairs of the farmer,
(b) Attempt to mediate between the farmer and the mortgagee,
(c) Provide a written report to the court respecting any matters that it considers relevant to the application including its opinion about whether the farmer
  i) has a reasonable possibility of meeting his obligations under the mortgage, and
  ii) whether he is making a sincere and reasonable effort to meet his obligations under the mortgage,
(d) provide a copy of the report to the farmer and the mortgagee.

The procedure generally followed by the board is that it will appoint a committee made up of a small number of its members to investigate the financial affairs of the farmer in question. The board has also retained field service workers who will investigate the affairs of the farmer by meeting with him and his creditors and assist him in the preparation of a statement of affairs.

The farmer's best witness in this type of proceeding again is well kept financial records. He

should be able to demonstrate the reasons for his financial problems and how he hopes to overcome them. Although the Farm Land Security Act states that the burden of proving that an exemption should be granted lies with the mortgagee, if the farmer has no proper financial records or realistic plans for the future, it makes it a lot easier for the mortgagee to establish that the farmer has no reasonable possibility of meeting his obligations under the mortgage or he is not making a sincere and reasonable effort to meet his obligations under the mortgage.

The farmer will be required to disclose his full indebtedness in the statement of affairs. The statement of affairs can be roughly broken down into four areas, which are:

(a) A net worth statement showing what buildings, land, crops, farm supplies on hand, machinery, livestock and non-farm assets which he owns measured against his current and long term liabilities,
(b) A farm plan showing his projected income from sales of livestock, grain and any other sources measured against the input costs incurred to realize the income,
(c) A cash flow projection showing the farmer's projected income on and off the farm measured against operating expenses for the next two or three years,
(d) Income statements showing his profit and loss for the past three years.

If a farmer has difficulty finding out what his past due liabilities and debts are there are a number of places where he can obtain some or all of this information.

The first place he can look is at the Land Titles Office. He can order a copy of his titles to see what mortgages, liens and caveats are filed against his titles by secured creditors or persons claiming an interest in his land. A copy of the title to his land will not, however, disclose the existence of any writs of execution which have been filed against the land and it will be necessary for the farmer to also obtain a further document from the Land Titles Office known as a General Registry Certificate. This certificate will disclose the existence of any writs of execution which have been registered by his creditors against himself or his land in the Land Titles Office for the district where he resides. The farmer can either attend at the Land Titles Office to obtain these documents or he could simply have a lawyer order them for him.

Where a farmer wishes to have a quick summary of all security interests which have been registered against his farm machinery, livestock, crops and other personal property he can go to the office of the local registrar of the judicial centre nearest to his place of residence and order a search to be performed in the Personal Property Security Registry against his own name. This only costs $10.00 and the search will disclose the existence of any financing statements which have been registered against his name. Each financing statement will contain the ban of the creditor claiming an interest in some of his goods plus a brief description of the goods which have been pledged as security under that security agreement. It will also disclose the existence of any writs of execution which have been registered in the Personal Property Security Registry against the farmer's name.

Where a farmer wishes to demonstrate that he had a good credit rating prior to the past few years he can go to the credit bureau nearest to where he resides and request a copy of a credit report. This credit report will disclose the existence of all past due debts, bank loans and judgments which have been placed on his credit record by his creditors. A farmer may be able to demonstrate that he has only recently started to get into financial trouble and he may be able to relate those financial troubles to negative outside influences such as drought, decreasing crop yields and decreasing commodity prices. The particulars of how a farmer or other persons can obtain his credit records will be covered in Chapter 6 of this book.

A farmer who is meeting with members of the Farm Land Security Board should keep in mind the factors which the board will consider when looking at his operation. Some of these factors are:

(a) The obligation of the farmer to any creditor other than the mortgagee,
(b) The provisions of the mortgage concerning the date and terms of repayment,
(c) The state of cultivation of the farm land,
(d) The value and condition of the farm land,
(e) The state of accounts between the farmer and the mortgagee,
(f) The earning capacity, income and assets of the farmer,
(g) The proportion of the income of the farmer and his spouse that is required to meet his debt obligation,
(h) Any general or local agricultural, economic and climatic conditions including hail, flood, drought, frost or agricultural pests,
(i) Whether the farmer has requested or received financial assistance from any other sources,
(j) Any conditions and circumstances beyond the control of the farmer, including his inability to market an agricultural commodity, the price of any agricultural commodity and the cost of production.

If there is any thing which needs to be stressed in dealing with the board, it is that the farmer should

demonstrate that his cash flow is or will be strong enough to give him the possibility of meeting his obligations under the mortgage, or that he has recognized that his cash flow is not sufficient to support his present debt level and that he is taking such steps as are necessary to reduce the demands made by creditors on his cash flow.

Once the board has finished its investigation the farmer will be given a copy of the report of the board and any supporting documentation which will be submitted to the court for the hearing of the mortgagee's application for an exemption from the application of Sections 7 and 8 of the Act. Immediately upon receiving this report the farmer should review it see if there is anything which he disagrees with. By reason of the informal nature of the board's inquiry, there will necessarily be a certain amount of second hand statements concerning the farmer's attempts to meet his obligations under the mortgage or otherwise deal with his other creditors. If the farmer has disagreements with any of these statements he should immediately send a letter to the board setting out the grounds for his disagreements and request that he be given an opportunity to be heard on these points. The farmer should be prepared to document any disagreement which he has with the board's report and he may request that the board grant him a hearing on the point or he may request that the person who has provided this information be requested to give it to the board again under oath.

Throughout his dealing with this board the farmer should keep in mind that the board's recommendations contained in their report are only recommendations. The board report will be only one of the documents which will be placed before the judge who is hearing the application of the mortgagee for an exemption under the Act. The farmer will also have the right to retain counsel and file affidavits setting out that he does have a reasonable opportunity of meeting his obligations under the mortgage or that he is making a sincere effort and reasonable effort to meet his obligations under the mortgage. It is only when a court is satisfied that the mortgagee has proven that the farmer has no reasonable possibility of meeting his obligations under the mortgage or that he is not making a reasonable effort to meet his obligations under the mortgage that the court will allow the mortgagee's application and permit the foreclosure to proceed.

Under the Farmers' Counselling and Assistance Act it is stated that any information provided by the farmer or a financial institution pursuant to an application of a farmer under that Act will be held by the members of the Provincial Farmers Counselling and Assistance Program Committee in confidence but there is a specific provision in the Farm Land Security Act overriding that general statement. Under the Act the Farm Land Security Board may request a copy of any report and records related to a report made by a panel constituted under that Act and the Farm Land Security Board may review that report and records and make reference to them in any report which they prepare for submission for the court under the Farm Land Security Act.

Chapter 6

Collection Agencies and Credit Reporting Agencies

6.1 Collection Agencies

When a farmer fails to pay a debt as it comes due, the creditor whom he owes will make some initial contact with him to try to enforce the farmer's compliance with the terms of the contract which he has failed to live up to. Once the farmer fails to remedy this default for some period of time, then the creditor will generally refer the matter to a lawyer or a collection agency for collection if he has been unsuccessful at obtaining payment of the debt himself.

There are certain limitations on the tactics which may be used by collection agents in collecting debts from farmers or any other persons in the Province of Saskatchewan. The statute which regulates collection agents in Saskatchewan is the Collection Agents Act. This Act regulates the licensing of collection agents and their practices. There are many persons in the field of collecting money who are not regulated by the Act. These persons include lawyers, finance company employees, bank officers, retail agents who collect monies for their employers and persons collect money for themselves.

Collection agencies generally agree for a fee which is often a percentage of the debt to collect debts for creditors who lack time or abilities to collect on their debts. The amount of this percentage fee depends on the size of the debt and whether or not there is an ongoing arrangement between the creditor and the collection agency. The collection agency's fee may range from 20%-50% of the debt. As a result there may be less room for negotiation once the matter has been referred to a collection agent because of the already substantial amount of the debt which the creditor has agreed to discount in putting it out for collection with a collection agency.

The collection agent will try to collect from the farmer or other debtors through notices, phone calls or personal visits. Where these steps do not

succeed then the collection agent may take the debtor to court.

The Collection Agencies Act sets out a list of prohibited practices which can not be engaged in by collection agents here in Saskatchewan. Some of these prohibited practices are:

(a) Collecting more than the amount of the debt from the debtor -- a debtor can not be compelled to pay a fee to the collection agent to compensate the creditor for the agent's fee.

(b) Sending collect telephone calls or collect telegrams to the debtor.

(c) Making telephone calls of a nature of frequency as to constitute harassment of the debtor or his family. It is of some note that the only reported case of a prosecution under the Collection Agencies Act is for a breach of this particular provision. In this recent Saskatchewan case, it was held that the making of six telephone calls in two days, using a loud voice and threatening terms is harrassment within the meaning of this section.

(d) Collection agents are prohibited from making telephone calls to debtors on Sundays, holidays, or hours of the day other than 8:00 a.m. to 9:00 p.m.

(e) They must not give false information to other persons about the debtor.

(f) They must not give or threaten to give information regarding the debtor or his family to his employer or a member of his family which would adversely affect his employment or the employment of one of his family members.

Collection agencies must file copies of their form letters or agreements with debtors with the Department of Consumer and Commercial Affairs of Saskatchewan. This prevents them from using collection letters or notices which closely mimic court documents and mislead the debtor.

Where a collection agent engages in any of these unlawful practices, he may be charged with a breach of the Act and be liable to a fine of not less than $50.00 or not more than $1,000.00.

Collection agencies may be required to post bonds as a condition of setting up business and all or part of their bond may be forfeited or they could have their licences suspended for engaging in these unlawful practices. Collection agencies generally stay well within the bounds allowed them under the Act for collection of debts because of the severity of these penalties.

A farmer or any other person should note that there are many persons who collect money to whom the Act and the prohibited practices penalties do not apply.

In any case where you have difficulty with collection agents or other debt collectors you can contact the Department of Consumer and Commercial Affairs to obtain information as to your rights or to make a complaint.

6.2 Credit Reporting Agencies

Credit reporting agencies are also regulated and licenced by the Province of Saskatchewan. The statute which regulates them is the Credit Reporting Agencies Act. A licenced credit reporting agency is required to post a bond with the Provincial Government.

Credit reporting agencies do not release information in credit files to just any one. The persons or agencies who they are limited to releasing information to are:

(a) A person who requires this information for the purpose of a decision in respect of a consumer's application for credit, employment, tenancy, or other legitimate business purpose.

(b) An assignee of an agreement for credit, insurance or tenancy.

(c) Federal, provincial or municipal governments or agencies or police officers in the course of their duties.

(d) The person who is the subject of the report.

There are also limits on the types of information which can be contained in a credit report. No bankruptcy which has occurred 14 years or more before the date of the report can be included. No information can be given on statements of claim issued 12 months before the report is given without a present status report on that action. No information whatsoever can be given on writs, statements of claim, actions, judgments or debts which are statute barred. As a general rule the limitation period for actions on judgments is 10 years from the date of taking out of the judgment and the limitation for actions on debts is six years from the date of the breach of the contract. Any other adverse, factual or investigative information more than seven years old can not be provided in a report unless it is voluntarily supplied by the person being reported on. Where the report contains any investigative information reasonable efforts must have been made to corroborate the information.

There is a duty imposed upon credit reporting

agencies to ensure maximum accuracy of their information. They are also required to keep a record of all reports given out and the method of reporting, whether it was by telephone, in writing or released to a person who attended at the credit reporting agency.

Where a creditor requests a credit report on a person, he must either have an acknowledgment in advance from the person being reported on that the report is being obtained or he must subsequently inform the person that the report was obtained.

A farmer or any other person may require a credit reporting agency to disclose all information on their records about him or her. The agency may require the person to be accompanied by a witness to prove his identity before the information will be revealed. After reviewing the information if the farmer has any disagreements with the information, he may serve notice on the agency to correct the information on the file and the agency is required to investigate and respond to the farmer. Where he wishes to dispute the information contained in the file, the agency is required to note the dispute on the file and all subsequent reports given out shall include this dispute. If, after an investigation is made and the agency finds that information should have been deleted from the farmer's credit file, the agency is required to inform all persons who have obtained a report on the farmer within the last 12 months that the information has been deleted.

The fact that the farmer or any other person has a good credit rating is not necessarily an indication that they are able to take on more debt than they are able to presently handle. All that a credit rating does is state that no loans or debts are presently in arrears. Simply receiving a good credit rating or a lack of negative entries on a credit report will not be determinative of a farmer's application for further credit. The farmer will still be required to show that he is able to service the additional debt load which he will be taking on when he enters into new credit arrangements.

Chapter 7

Practical Pointers on Dealing with Financial Difficulty

The glory days of farming are over for the foreseeable future. Agriculture is faced with such problems as:

1. Increased international competition for export markets,
2. Decreasing or static land values accompanying a low rate of inflation,
3. Decreasing commodity prices,
4. Drought,
5. Insect pests,
6. Increased United States protectionism in the agriculture sector.

Farmers must make their available resources go as far as possible today. To do so will require financial planning, the cornerstone of any farm planning for profit or survival. Proper financial records and their analysis will reveal weaknesses in a farm business operation. It is true that proper financial records will not increase a farmer's yield per acre or per cow, but without the proper financial records, the farmer has no method of monitoring the weaknesses in his business operations. As profit margins grown thinner or more stress is placed on available profits, then a lack of records will definitely be a contributing factor to financial failure on the farm.

There are booklets available on most aspects of farm financial planning from organized books of accounts to be used by farmers to monitor their income and expenses to books making suggestions as to how a farmer can plan for profit. These booklets are available free of charge through the Economics Branch of Saskatchewan Agriculture or can be picked up at your local Agricultural Representative's office.

A farmer can use his financial records to create financial statements. The types of financial statements which a farmer should be able to prepare from his accounting records are:

1. **A Balance Sheet** – This is a statement of his financial condition and shows the value of his assets measured against the amount of his debts.

2. **An Income Statement** – This is a summary of his year's farming operation. It will set out the sales of livestock, grain, poultry, etc., less costs such as fuel, seed, feed and fertilizer.

3. **A Statement of Change in Financial Position** – This document is a link between his balance sheet at the opening of his previous year's operations and the income statement for that year's operations. It will show how the year's financial activities have affected the opening financial position of his farming operation. It will show an increase or decrease in his working capital from the first day of the year to the year end and where these changes occurred and in what areas monies were spend and what profit the expense generated.

These statements of financial change are necessary for a farmer to be able to analyse his

financial budget or plan for his year's operations in advance so that he can see where he anticipates he will be spending money and what returns his expenses will gain him.

A farmer is, in fact, now required to become his own business evaluator. There are booklets available which are of assistance in explaining the different methods and ratios which a farmer may use to measure the financial health of his farm.

When a farmer begins to experience financial difficulties, it is often best for him to be forthright with his creditors and inform them that he is making his best efforts to satisfy them and will continue to do so as far as his cash flow permits them too. Creditors will generally be more cooperative where they can see that the farmer is making efforts to pay his debts with his available resources as far as is possible.

It is also very important for a farmer to communicate his financial difficulties to his wife. There are numerous reasons for this:

1. A farm wife is very often the person in charge of keeping the financial records and she is well aware of any financial difficulties which she and her husband are facing. It may be that by discussing these financial problems with her, the farmer will be able to obtain advice from her as to how she feels the situation should best be dealt with.

2. This open communication will also tend to lessen family tension because both parties who have invested long years of hard labour to build up the farming operation will be able to participate in the decision making process.

3. Both of you will be able to sit down and see how much money is available to spend between the two of you. You can then jointly make a budget and attach priorities to your needs requiring money and reduce your debt load by not overspending.

Farmers must keep in mind that farming is by its very nature an extremely stressful occupation. The ordinary stresses of farming were heavy enough without the added burdens of the uncertainties imposed upon the farming community by the recent negative influences such as drought and low commodity prices. In the face of this mounting stress, many people respond by panic sales of cattle or other readily saleable farm inventory or equipment. These sales often have a doubly negative effect on the farmer.

Cattle panic sales at irregular times may result in the cattle not being eligible for stabilization programs and, as well, measured against the amount of indebtedness which the farmer has, the sale may have no appreciable effect. The sale does, however, become public knowledge very quickly in small communities and it creates an image of failure and causes credit to dry up. Such a sale may also end any good relations which the farmer has with his creditors. In addition, panic sales of inventory may cause secured creditors to move in to seize whatever grain or livestock that is left because they are afraid of losing the remaining security for the payment of their debts. Where the items sold are previously pledged as security under chattel mortgages, the creditor still has a security interest in the proceeds of the sale and is entitled to follow the proceeds if he is able to trace them and try to seize them.

Panic sales are particularly dangerous for corporate farmers because one or more of his secured creditors can appoint a receiver as a result of such actions. Once the receiver is appointed, he will generally proceed to wind down the farming operation and dispose of the farm assets thereby causing a total loss of the farm operation.

Finally, unless the proceeds of the panic sales are applied to current debts, the sale proceeds do little to improve liquidity or the farmer's financial position.

Chapter 8

Solutions to the Debt Problem

8.1 Introduction

Today's farmer is faced with a serious challenge if he is in financial difficulty and wishes to come out of it. The first step to coming out of financial difficulty is to realize how serious the problem is. In order to be able to gauge the seriousness of the problem a farmer has to be able to critically analyse his farming operation. He needs to have a set of proper accounts and be able to draw from them the information necessary to prepare financial statements.

On many farms today, the books are kept by the wife or the husband and wife together. When a farmer is preparing his financial statements or organizing his accounting records for analysis, his wife should play an active role as an equal consultant. In many cases she will have a better idea of how the farm operation is proceeding from a financial point of view because she is preparing the books. As well, in many cases she will be able to look at the situation more dispassionately and critically than the farmer himself. After all, in most cases, it was not her that decided to buy those

cattle from France or that new four-wheel drive tractor anyway.

If a farmer and his wife are having difficulty in putting together their financial records, it may be of some assistance to them to contact the Counselling and Assistance for Farmers' Program. Any farmer may request counselling or assistance in analyzing his financial records and preparing farm plans and budgets. The persons working with the program are other farmers who are either retired or active farmers who have demonstrated a high level of production and financial management expertise in their own farming operations. Their assistance is of a particular benefit to another farmer because they have experience with the same type of problems the farmer in difficulty is experiencing. Their assistance is paid for by the Provincial Government so there is no cost to the farmer. In addition, the farmer does not have to worry about suffering from the "pinstripe suit syndrome" whenever he attends the office or meets with the board members at his farm.

The prescribed forms for applying for further assistance are set up so that if the farmer has his financial information in front of him he can fill in the forms and have a full set of financial statements including budget and farm plans for the next ensuing years once the application for assistance is prepared.

Finally the farmer may find that he may qualify for a guaranteed operating loan if he meets the qualifications under that part of the program. In summary, if a farmer does require assistance in financial planning, the Counselling and Assistance Board is an excellent place to start.

When preparing any kind of financial statement it is important not to rely on the bottom line figure on last year's tax return. Farmers declare their income on a cash basis with Revenue Canada as a general rule. This means that a farmer does not as a general rule pay income tax or declare income until he receives it, and is not entitled to declare expenses until they are paid. As a result, where a farmer's income is exceeded by his expenses and he does not pay the expense, it is not recorded as for income tax purposes. As the unpaid expenses build up, the farmer's income tax return becomes less and less indicative of his true financial position. When preparing a realistic picture of his financial position, a farmer must include past due unpaid expenses as these will have to be paid from future income.

If a farmer wishes to obtain preprinted account books to record his daily expenses and revenues, such books are available free of charge from Saskatchewan Agriculture. He can obtain these books plus a wealth of other informational booklets on both improving his production and financial management from his local agricultural representative's office.

Another person to whom a farmer can turn for financial advice is his banker. Like the farmer's wife, the banker has an intimate knowledge of the farmer's financial management habits, and contrary to popular belief, he wishes to see the farmer stay in business as much as the farmer does. A farmer should, however, understand that farmers traditionally resent intrusion into their affairs and the banker may hesitate to offer advice to him until such time that the problem appears serious enough to justify intervention. At that time he and the banker may be in antagonistic positions, so if a farmer is going to ask for advice or comments on his financial management practices from his banker he should do so before his position is so bad that the principal concern of the bank is protecting their position vis a vis the farmer's loans.

In addition, he should realize that banks and credit unions are also feeling the effects of the farm financial crisis as well as farmers so if a farmer is intending to seek financing to help him through these times he should realize that the rules of the game are changing. Banks are now hesitant to base their loaning practices on such tried and true projections as percentages of equity or the property value because of two factors: declining land prices and the difficulty of foreclosing on farmers. Where a farmer is in difficulty, and it takes two years to foreclose, then these two factors will quickly bring the amount of interest and principal arrears to an amount equal to or in excess of the fair market value of the property being foreclosed.

Where a farmer is contemplating using financing as part of his long range plan to get out of difficulty he must realize that the key factor which will be examined by any financial institution is his farm operation's cash flow -- its ability to service the long term debt, meet current expenses, allow for reasonable capital expenditures and give the farmer and his family a reasonable lifestyle.

Again the Economics Branch of Saskatchewan Agriculture has a excellent booklet entitled "Farm Credit Management" which discusses in detail how to apply for credit and plan its use. It has been prepared by people with farming experience and is also free of cost. A second pamphlet entitled "Planning for Profit" is also available. It explains how financial planning will assist farmers and gives examples of the different types of financial statements and their uses.

There are a number of options available to farmers in financial difficulty. They are:

1. The "do nothing-head in the sand approach",
2. Refinancing current debt over a long term,

3. Selling down and refinancing current debt over a long period,
4. Complete sell-out.

8.2 The Do-Nothing Approach

It may seem foolish to mention this as an approach to a very serious problem, but it will be chosen by a certain number of people as an option. Unfortunately, the economic forecast for our agricultural economy is not sufficiently rosy to allow this as a viable option. It will, however, be chosen by a certain number of persons who either through bewilderment or eternal optimism feel that if they procrastinate long enough the problems will simply go away. The only result of this approach today is that their financial problems will become so large that they will not be able to be dealt with and will overwhelm the procrastinator. Even an organized dispersal of assets to at least leave the farmer with something will not be possible.

8.3 Refinancing Current Debt Over a Longer Period

Where a farmer wishes to use refinancing to enable him to pay out his current expenses by borrowing money and capitalizing this debt and repaying it over a longer period of time, he must have planned for the future realistically using conservative income figures in order to see how much money he can safely borrow and be able to repay.

When applying for credit a farmer should shop around to get the best interest rate possible. Another important feature of any long term loan is whether or not he can repay the loan early without being required to pay interest bonuses or penalties. Some mortgages allow the farmer to repay an additional amount of up to 10 percent of the principal owing once in each year, others allow the farmer to repay additional amounts at the time each payment is made.

Another important figure in any mortgage is the length of the term of the mortgage. One of the most serious farm planning problems farmers have had to deal with in recent years is unstable interest rates. Banks became very hesitant to extend terms of mortgages beyond three years or farmers wished to keep the term as short as possible so that they could renegotiate their mortgage if the interest rates dropped. Fortunately for the last two years or so, interest rates have leveled off and it is now easier for farmers to obtain mortgages for longer terms making it easier to plan for the future.

The second important time period referred to in a mortgage is the amortization period, which is the period of time the mortgage is calculated to be paid out over. Amortization periods generally run 15, 20 or 25 years. The longer the amortization period, the smaller the monthly or semi-annual payment will be, but over the long run the amount paid in interest over the longer period will be far greater.

8.4 Selling Down and Refinancing

It is very important again to state that before any type of sell down is started that rigorous financial analysis of the farmer's operation be undertaken. This is a necessary step before a farmer decides what should be sold.

The best situation for the farmer to be in is to be able to appraise which of his assets are "redundant" or not earning him enough income to justify keeping them. A farmer should also have a financial plan so that he can see what he will want to use to earn income over the next few years. As an example, a farmer may find that he has more equipment than he needs for his operations or the fuel costs of running the larger equipment he owns is too much to justify using it then he may choose to sell some of this equipment. The sale may inject needed cash into his operation, or it may just pay out the loan on the machinery, but even in this case it will reduce the demand on his cash flow.

Where a farmer disposes of machinery he should be aware of the possible negative tax consequences of the sale. Where the machine has been acquired after 1971, for tax purposes it will be lumped into a class for depreciation purposes and when it is sold there may be recapture of depreciation which is treated as an inclusion of straight income (not capital gains) for tax purposes in the year of sale if there is not sufficient expenses in the year of sale to balance against the income realized.

The farmer should also see that the proceeds of sale of secured goods are applied to the debt they secure to retain the confidence of his banker and to give clear title to the purchaser.

If a farmer wishes to sell land for a profit he should know that he can use the new "capital gains" exemption passed in the new budget to get the sale price to him without any negative tax consequences if he and the property being sold meet certain criteria. This criteria is that the thing being sold must be "qualifying farm property". Qualifying farm property will be eligible according to the budget for the full $500,000 capital gains exemption. It consists of:

(a) Real property used in the business of farming for at least five years since 1972 by either the tax payer, his wife or their children or spouses.

(b) Corporate shares or partnership interests used by the farmer or his spouse or children in the business of farming.

For other property there is a cumulative phase-in of the capital gains exemption -- $20,000 in 1985; rising to $50,000 in 1986; $100,000 in 1987; $200,000 in 1988; $300,000 in 1989; and $500,000 in 1990.

There are two comments which should be made regarding the capital gains exemption at this time. The first is that the budget is not law, it is only a statement of general principles and intentions. It will not be law until it has been presented in the form of draft legislation to Parliament and has been passed into law. It is possible that parts of it could be changed until it is passed into law.

The second comment is that it is probably not possible to sell non "qualifying farm property" in 1985 and structure the sale so that the purchase price is paid in amounts equal to the cumulative exemption in future years and expect to have it income tax free. Instead the seller will be deemed to have received the full proceeds in the year of sale and only get the $20,000 deduction although he will be able to spread the gain over a period of years by taking a reserve for that part of the purchase price paid in subsequent years.

In summary, when selling items which may be eligible for the capital gains exemption, it is best to stay with the guidelines set by the budget now and not hope that changes will be made before the budget is enacted into law, which will retroactively validate your sale. If in doubt phone Revenue Canada, or check with a local chartered accountant or lawyer before arranging the sale.

A farmer should also be aware that when he sells land with buildings that part of the price must be allocated to the buildings and that if they have been depreciated that that part of the price which is recaptured depreciation will be treated as straight income and not be eligible for the capital gains exemption. This rule only applies if the buildings were acquired after 1971.

From a practical standpoint before agreeing to sell land, a farmer should know the value of any encumbrances against the land. He can find this out at the Land Titles Office by requesting an up-to-date copy of his certificate of title plus a general registry certificate in his name. This will show all registered encumbrances against the land plus any writs of execution which will attach to the land if he tries to transfer it.

Where he is selling part of the land he owns and he has a mortgage against all of it, he may obtain a partial discharge of mortgage for that portion he is selling. Where all of his land is subject to one or more writs of execution, he may be able to get his judgment creditors to agree to lift their executions for this one transfer upon a partial payment as they will still have valid writs of execution against his other lands.

Also, if a farmer is selling land to pay off a mortgage in arrears and he has been able to get the bank or financial institution to take a lesser amount, the lesser amount should not be agreed to be just principal but some amount of the sale price should be allocated as against interest in arrears so that it can be used as an expense. The amount paid on principal is a capital expense and will probably not be deductible as an expense as it was used to acquire a capital asset.

Where a farmer is paying out the full amount of a mortgage from the proceeds of sale any interest arrears and interest for the year of sale is deductible from his income for the year of sale.

Where a farmer is selling land to his children at fair market value, or any other value they should also remember that if they meet the criteria of the Farm Purchase Program the program will pay interest rebates to the purchaser to, in effect, reduce the interest rate on the loan from as high as 12% to 8% per annum. To qualify, the purchaser must be an individual who is a bona fide farmer resident in Saskatchewan or who will be a bona fide farmer within five years, whose off-farm income does not exceed $35,000 and whose net worth combined with that of his or her spouse does not exceed $300,000.

Once a farmer has chosen what assets he wants to sell based on financial analysis and reasonable farm operational planning for the next few years, he may again wish to refinance his operation to take advantage of lower interest rates and longer mortgage terms which are now available. He should be guided by the suggestions set out in 8.2. Hopefully, the financial planning and organization he has utilized in selling down some assets will show that he is exercising sound financial judgment, and will assist him in obtaining financing. More and more loans are being given according to the farmer's ability to service his debt loan and the bank's perception of him as a competent financial and production manager able to maximize his cash flow in these difficult times. The first step to both maximizing cash flow and projecting the appearance of being able to do so is to be able to present the bank or credit union he will be dealing with with a well organized financial statement and cash flow projection which he can meet.

8.5 The Complete Sell Out

When a farmer is arranging a complete sell out due to financial difficulties which he can not cope with, or does not wish to, he should keep an eye on both the practical and tax aspects of a sell out.

From a practical standpoint he must have an accurate picture of his total indebtedness and know that it is worth the effort of an organized sale. An orderly sell off will generally require the good will or at least the non-interference of his creditors during the sale process. For this reason it may be a good idea to contact all secured creditors prior to the date of sale of the secured item to get their consent to the sale, and if the value of the security exceeds the debt, an agreement to take a reduced pay out to give clear title to the purchaser.

If a farmer is faced with a large number of creditors hounding him he may wish to seek legal advice regarding his rights. As well, he may wish to use the services of the Provincial Mediation Board to assist him in negotiating with his creditors and reaching some kind of agreement to when and how much each of them will get from the sale of the farmer's assets.

When selling assets to satisfy judgments and secured creditors the farmer should always remember what exemptions from seizure under either writs of executions or chattel mortgages he is allowed under the Exemptions Act, and under what circumstances he is entitled to them. A farmer who is selling out may, under certain circumstances, be best advised to keep sufficient machinery to be able to farm his home quarter in order to be able to claim the farm-based exemptions even after a sell out of most of his farming operation. He should also remember that unless he is forced to sell exempt assets the proceeds of sale generated from the sale will not be given the same exemption from seizure. Simply selling exempt articles may not be in his best interest as a result of this rule.

Finally, where a farmer is selling heavily mortgaged lands he should keep the legal fees and disbursements of the sale in mind so that he knows whether or not he will be able to pay for these out of the proceeds of sale or whether they will have to be paid out of his pocket.

When selling out, from a tax standpoint there should not be a lot of difficulty because the decision is usually made on the basis that current expenses and capital expenses exceed the value of the farm. A farmer may, however, be able to carry any losses forward as against future income or apply to have past years' income tax returns amended to reflect these unused expenses in order to get a refund from Revenue Canada after a sell out. It is also important to remember that payment of the principal of a mortgage is not considered to be an expense, so if he is negotiating a payout of a mortgage from the sale of lands he should remember not to just negotiate forgiveness of arrears of interest and the application of the sale proceeds just to the principal because he can not then claim the interest as an expense, but the negotiations should include a pro rata reduction of the principal and interest so that he will have the paid interest arrears available as a deduction for income tax purposes.

Chapter 9

The Farmer and Bankruptcy

9.1 Introduction

Bankruptcy is one of the most misunderstood areas of the law. There are many misconceptions in people's minds concerning it. Some people feel that it is a panacea which will allow others to escape payment of their debts and some feel that it is an extremely onerous and embarrassing state of affairs from which a person can never recover. The truth is somewhere in between. The Bankruptcy Act has four basic objectives:

(a) To control the distribution and division of assets of an insolvent debtor,
(b) To punish fraudulent debtors,
(c) To offer insolvent persons a means of getting out from under a crippling debt load,
(d) To promote confidence in the credit system.

Bankruptcy may be considered by a farmer as a final alternative when negotiations for refinancing have broken down and a successful selling down is not possible or available as an alternative. Bankruptcy should, however, only be considered where unsecured debts are high and/or the amount of secured debts are in excess of the security and the debtor will be liable for the deficiencies after the sale of the security.

The principal benefit of bankruptcy to a farmer is that it cleans up his financial picture and allows him to start anew. However, a judge of the bankruptcy court may require him to make some payments to his creditors as a condition of his discharge from bankruptcy in circumstances where the sale of his assets did not pay over 50% of his debts and his creditors petition the court for further payment. These payments when ordered are not generally that large and are usually only ordered where the bankrupt has available income prior to his discharge after payment of his living expenses. The order for payments cease upon the farmer's discharge from bankruptcy.

The threat of bankruptcy may also be a strong weapon in the farmer's favor when he is negotiating either refinancing or a pay down of his outstanding debts. Many creditors would prefer to negotiate with the farmer personally on a reduced basis rather than accept the lengthy delays and the administrative difficulties of dealing with a trustee in bankruptcy and may therefore be amicable to settlement where there is a real possibility that the farmer will declare bankruptcy.

There are three ways of a farmer coming under the jurisdiction of the Bankruptcy Act:

1. Making a voluntary assignment into bankruptcy.

2. Having a receiving order made against him -- it should be noted that individual farmers can not be petitioned into bankruptcy in this fashion -- it is only available for use against farming corporations.

3. The filing of a proposal. This is voluntary procedure open to an insolvent person who wishes to try with the assistance of a trustee in bankruptcy and the agreement of his creditors to arrange for a rearrangement of his debts subject to the supervision a trustee. It should be noted that where the creditors refuse to accept the scheme put forward by the debtor and are otherwise unable to reach an agreement with him or are unable to obtain the consent of the bankruptcy court to the proposal then the debtor is considered to have filed a voluntary assignment as of the date of non-approval of the proposal.

Before a farmer or any other person can consider bankruptcy as an alternative solution to his problems, he must meet certain legal criteria -- he must be "insolvent person". This is defined in the Bankruptcy Act as:

> "A person who is not bankrupt and who resides or carries on business in Canada, whose liabilities to creditors provable as claims under the Bankruptcy Act amount to $1,000 and
> (a) who is for any reason unable to meet his obligation as they generally become due, or
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of a fairly conducted sale under legal process, would not be sufficient to enable payment of all of his obligations, due and accruing due."

A farmer is therefore legally entitled to make an assignment into bankruptcy only when he owes a minimum of $1,000. This amount is not reflective of today's situation and a farmer should not consider bankruptcy unless he owes at least $10,000 or more of unsecured debt and is not able to meet his obligations as they come due. There are also numerous other practical considerations which a farmer should bear in mind when considering bankruptcy as an alternative, some of which are:

(a) The number of creditors whom he owes money to.
(b) Whether or not he is being served with garnishees due to judgments, or he is being constantly harrassed by creditors, or is being required to attend on judgment debtor examination on a regular basis.
(c) If he is working off farm, he is being made subject to wage assignments.
(d) Whether or not his debt obligations have severely cut into his ability to support his family.
(e) The farmer should also consider the cost of an assignment which will be no less than $500. He will have to pay for the trustee's fees plus legal fees if he requires the services of a lawyer during the bankruptcy proceedings. The trustee may require a deposit of funds from the farmer declaring bankruptcy if there are not sufficient assets to satisfy the trustee's account at the outset of the procedure.

9.2 The Effect of Making an Assignment into Bankruptcy

Once a farmer makes an assignment into bankruptcy, or his proposal is not accepted by the court or his creditors, the ownership of all of his assets vests in the trustee in bankruptcy, subject to the exemptions allowed under Section 47 of the Act. Curiously enough the section refers to any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situated and within which the bankrupt resides. These are the exemptions listed under the Exemptions Act of Saskatchewan which have previously been listed. The highlights of those areas of interest to farmers are:

1. Necessary and ordinary clothing.
2. Furniture and household furnishings and appliances to a value of $4,500.
3. Grain, flour, vegetables and meat sufficient to provide for food and fuel for heating purposes.
4. Farm machinery and farm equipment including one truck necessary for the proper and efficient conduct of the farmer's agricultural operations for the next ensuing twelve months.

5. Seed grain sufficient to sow all his lands at the rate of two bushels per acre.
6. His crop to such an extent as necessary to pay legitimate cost of harvesting it and to provide a necessary living allowance for him and his family.
7. The homestead provided that it is not more than 160 acres.

When appointed the trustee will take all steps necessary to take control of all of the bankrupt's non-exempt property for the benefit of the unsecured creditors. He will then send out a notice of the first meeting to all of the creditors together with a form of a proof of claim and a proxy should a creditor wish to appoint someone to act for him at the meeting of first creditors.

It should be noted that there are specific rules for the procedure at the first meeting of the creditors. Votes are given to the creditors according to the amount of their claims, and certain creditors such as those persons related to the bankrupt or not dealing at arm's length with him are not entitled to vote at all. Secured creditors are required to either surrender their security or to value it and then are only allowed to vote in respect of the value of the balance of their debt.

At the first meeting or at subsequent meetings the creditors may appoint up to five persons to be inspectors of the estate of the bankrupt. Their role is to see that all of the property of the bankrupt has been accounted for and that the administration of his estate has been completed as far as can reasonably be done and that all expenses incurred in the administration of the bankrupt's estate are proper and were duly authorized.

It is the role of the trustee in bankruptcy to receive all of the creditors' proofs of claim and to accept or refuse them. Where a secured creditor values his security in his proof of claim the trustee may redeem the security by paying to the secured creditor the amount assessed by him in his proof of claim.

There is a statutory scheme of distribution of the bankrupt's assets. It is set out in Section 107 of the Act and is as follows:

(a) For a deceased bankrupt -- his reasonable testimony and funeral costs.
(b) The costs of administration of his estate including expenses and fees of the trustee, legal fees incurred by the trustee.
(c) A levy assessed to help pay for the administration of the Act by the superintendent of bankruptcy.
(d) Wages, commissions, salaries or compensation paid to persons employed by the bankrupt for the three previous months to a maximum of $500.
(e) Municipal taxes assessed against the bankrupt within two years of bankruptcy that do not constitute a preferential lien against his property.
(f) Arrears of rent for three months and three months of accelerated rent following bankruptcy.
(g) Indebtedness of bankrupt to Worker's Compensation, unemployment insurance, income tax.
(h) Claims of injured employees of the bankrupt insured by bodies other than Worker's Compensation, but only to the amount actually paid to the bankrupt.
(i) Other claims of the Crown.

After these claims have been paid then all other unsecured creditors of the farmer are entitled to be paid from the bankrupt's estate on a pro rata basis (on an equal percentage rate of the amount of their claim).

It should be noted that spouse's or former spouse's claims for wages of salary or commission will not be paid until all other creditors have been paid. Other relatives of the bankrupt are not entitled to the preference given to other employees and only share in the estate with the other unsecured creditors of the corporation.

9.3 Administration of the Bankrupt Farmer's Estate

The general role of the trustee is to call in all of the bankrupt's estate and then to sell it. It should be noted that where the bankrupt owns property held in joint names the trustee can compel a sale of the bankrupt's interest in the property. In certain circumstances the other joint owner may wish to purchase the bankrupt's interest in the property but if this is not possible then the trustee may be able to sell the whole property and remit one half of the proceeds to the other joint owner. With real estate it must be remember that the trustee is only entitled to the equity in the property so if the mortgage amount and interest arrears are in excess of the value of the recoverable equity in the property the trustee will have no interest in the property and it will be left to the mortgagee. At that time the joint owner may be able to work out an arrangement with the mortgagee to assume the payments under the mortgage.

Where the trustee does wish to sell property, he is empowered to do so under the Act. Where the creditors have attended at first meetings of creditors and have appointed inspectors then the trustee can only sell with their consent, otherwise he has a general authority to sell. He may sell by private contract, public auction or by tender.

The most common form of sale is by tender. When advertising the sale the trustee must state for a

sale by tender:

(a) Where the bids may be sent.
(b) An invitation to attend the tender opening showing the time and place of the sale.
(c) A notice that 15% of the purchase price must accompany the bid and that it will be returned if the bid is not successful or retained as liquidated damages if the tenderer withdraws or does not complete.

It should be noted that in the event that the tender states that any tender will not necessarily be accepted, on refusal the trustee can not deal with one or more of the tenderers to elicit a higher bid, even if it is in the best interest of the creditors of the bankrupt. The courts have held that such activity tends to reduce confidence in the tender process and will not be permitted. Instead the proper procedure on rejection of all tenders is to invite all to retender.

In selling property the trustee is able to give no better title than the bankrupt had as a result the purchaser is buying on an as is basis, relying on his own investigation of the title.

The trustee also has other tasks in the administration of the bankrupt's estate. He must inspect all the claims of the unsecured and secured creditors and may take steps to recover property which belongs to the bankrupt or move to set aside payments or transfers of property by the bankrupt which constitute preferences in favor of certain creditors made when the bankrupt was insolvent.

The final and most important role of the trustee is to pay out the unsecured creditors of the bankrupt. It should be noted that the property which the trustee will distribute is not only property acquired by the bankrupt prior to bankruptcy but also that acquired subsequently, until he is discharged. Where the after acquired property is wages the trustee is entitled to examine the bankrupt to see what his expenses are and what he can pay into his estate for distribution to his creditors until his discharge.

Usually no earlier than three months from the date of the assignment and no later than one year from that date the trustee will apply to the court for an order discharging the bankrupt. The court may grant or refuse the order, suspend its operation for a period of time or attach conditions such as further payments as a condition of the order. Unless there are extraordinary circumstances the court will grant the order of discharge. The ground under which the court may refuse, suspend or conditionally grant the order are listed in Section 143 of the Act. It should be noted that two of these grounds for refusing to grant a discharge specifically do not apply to farmers. These are failing to keep proper accounting records or continuing to trade after knowing he is bankrupt. The other grounds basically are being reckless or negligent in the handlings of his property and business prior to his bankruptcy.

The application for a discharge will not generally be refused unless it can be shown that there is some element of wrongful behavior on the bankrupt's behavior. The intent of the Act, after all, is to assist in the reformation of the bankrupt and offer him a method of getting out from underneath crippling obligations.

9.4 Proposals Under the Bankruptcy Act and the Orderly Payment of Debts Provisions

There are two methods which a farmer can use under the Bankruptcy Act to try to deal with his creditors without going bankrupt. It may seem that this is a contradiction in terms but by reason again of the structuring of our legal system under the British North America Act the Federal Government has jurisdiction over "Bankruptcy and Insolvency" and these provisions deal with insolvent persons dealing with their creditors. There previously were provincial laws dealing with this area but they were held to be unconstitutional. However, in Saskatchewan the orderly payment of debts provisions of the Bankruptcy Act are administered by the Provincial Mediation Board, a provincial government agency.

A proposal can be used by both farming corporations or individual farmers who are insolvent or bankrupt. It is a plan to pay off creditors under the supervision of a trustee. The debtor must file a proposal with a trustee who will mail out notices to all creditors affected informing them of the plan, a meeting at which it will be voted upon, and informing them of their right to vote at the meeting. If the proposal is not accepted by a majority of the creditors the debtor is deemed to have made an assignment into bankruptcy. Where it is accepted by the creditors it must be submitted to the court for approval which will look at the proposal to see that it is in the best interests of all the creditors. It must also be shown for court approval that at least 50% of each creditor's claim will be paid. Again, where approval for the proposal is refused by the court, the debtor is deemed to have filed an assignment in bankruptcy on the date of the refusal. During the performance of the proposal by the debtor if he breaches the terms of the proposal the proposal may be annulled by the court and subject to rights acquired by purchasers from the debtor pursuant to the proposal, as assignment in bankruptcy will be deemed to have been made by the debtor and his property will vest in the trustee.

The factors to be considered by an insolvent

farmer before using a proposal are:

(a) Whether or not he has a realistic ability to meet his debts.

(b) Whether he will be able to obtain working capital -- either from relatives, through guaranteed farm loans or from local suppliers as credit for goods and supplies.

(c) The willingness of his creditors to work with him -- whether he has been honest with them and if they feel that they stand to profit by co-operating.

(d) The costs of the proposal.

The orderly payment of debts provision of the Bankruptcy Act really does not have anything to do with bankruptcy as such but are contained in the Act because they relate to insolvent persons. These provisions are only available to individuals and not corporations. These provisions allow for the insolvent person to make a monthly payment to the government agency involved in the administration of these provisons -- in this case the Provincial Mediation Board -- for distribution among his creditors.

There are certain debts which these procedures do not apply to such as taxes, mortgage debts or business debts incurred by a trader or merchant in the ordinary course of his business. The creditors to whom these debts are owed can not be bound by the provisions of the Orderly Payments of Debts Act. There are, however, other provisions of the Provincial Mediation Act which may cover them, so it is possible if all creditors agree a single monthly payment for all debts could be worked out by the board for a farmer. In addition, the Provincial Mediation Board also offers debt counselling and budgeting assistance for the farmer wishing to get out of difficulty. This debt counselling is in addition to any assistance he may seek through the Farmer's Counselling and Assistance Board.

The benefit of a consolidation order under the orderly payment of debts provisions is that it is a court order specifying the amount that the farmer has to pay each month on his debts usually in the sum less than the amount of all of his payments added up, and so long as he is complying with the terms of the order he will not be garnisheed, or have creditors take other actions to realize on judgments which they have obtained.

The procedure which a farmer uses to apply is to contact the Provincial Mediation Board who will meet with him or ask him to submit a list of all his debts, the amounts, names and addresses of his creditors and his income. Then notice of the application will be mailed out to all the creditors and the application will be heard and if any objections to the order are heard and disposed of by the board then an order will be made setting the monthly payment. The farmer then makes the monthly payment to the board and the board distributes it among his creditors. Where the farmer defaults in making payments for 90 days or more he will lose the benefit of the order, however, he may make a further application to the board to vary the order on the basis of a change in circumstances sufficient to justify a reduction in the amount of the payments.

The principal benefit of the orderly payment of debts provisions over the proposal under the Bankruptcy Act are the lower cost of the orderly payments application because of the government assistance and the fact that the failure to complete or secure approval of the application does not mean that the farmer has involuntarily made an assignment in bankruptcy.

Chapter 10

Dealing With the Stress of Financial Difficulty

Financial difficulty is a recognized cause of stress. This book is intended to offer legal advice, and a chapter on dealing with stress may seem to be out of place but it is necessary to realize how stress affects us and the decision making process.

Stress is the spice of human life and nowhere is this more aptly shown than on the farm. Farming is a stressful occupation at its best. There are very many sources of worry for farmers in the best of years. Farming is a physically hazardous occupation for the farmer. The farm's financial success is also dependent on a combination of factors which may or may not come to pass. Decreasing commodity prices, grasshoppers, lack of rain, an inability to harvest crops all add to the farmer's stress load.

Social scientists today are expending large amounts of time and money to explore how stress affects people. They are finding that farmers are generally better insulated from the negative effects of stress because their lifestyle affords them better protection from stress overload than does the city dweller's. Some of the factors which help the farmer deal with stress better than city dwellers are:

(a) A slower pace of life,
(b) Physical labour,
(c) Control over their work,
(d) Positive attitude,

(e) Stable home life,
(f) Better diet.

Most of the experts agree that the key to dealing with stress overload is to do something about it. It may not be possible to change the weather or the price of fuel but there are very many ways to change your attitudes or actions in response to these negative stresses which will enable you to better cope with the financial difficulties so many are feeling.

Another thing which must be kept in mind is that stress is a cumulative thing, and that your reactions to one particular stress will be influenced by numerous other factors. As the number of negative stresses increase, then your ability to cope with them will decrease unless you are doing something positive to counteract the stress.

The first place where financial stress will show its effect will be family relations. It is very important for both the husband and wife to have a good understanding of the depth of their financial difficulties so that both can work on dealing with the problem and the stress it causes. Both the husband and the wife can then have input into budgeting for the upcoming year and can plan to use what monies are available in the best possible way.

This communication will also be good for the relationship.

Most farms in Saskatchewan are family managed and operated. Like most small businesses where both the husband and the wife are minding the store, when there is financial difficulty marital difficulties can develop. Therefore, it is doubly important to work on your relationships during times of financial stress, because the strength of these relationships will be tested and they are the glue which holds your family farm together during times of financial difficulty.

The effects of stress overload are felt most strongly by farmers in the winter time. Most farmers' major payments come due if they are made on a yearly or a semi-annual basis at this time. Thus, at a time when the farmer is characteristically inactive and less able to deal with stress, his stress levels are at their highest. The farmer may not have that much to do if he does not have off-farm employment over the winter and he may have little to do other than concern himself with his financial problems during that time. Some of the things that any person can do to help himself or herself deal with stress are as follows:

(a) Keep busy during the off season with alternative activities -- join a local service club, coach or play hockey, join farm organizations, etc.

(b) Work on home and family relations -- communicate -- don't let financial difficulty drive your family apart.

(c) Prepare proper financial records and develop reasonable goals that you know you can achieve -- don't set goals which you can't achieve -- be conservative in your farm and financial forecasting.

(d) Keep your faith in God -- the sense of moral righteousness and the high code of ethical behaviour which most farmers possess is one of the attributes which the experts point to as contributing to longevity of farmers' lives and their good stress management.

(e) Learn how to relax and use your free time well -- this is one of the important tools which most people pay lip service to but do little about. If your stress levels are high, do something about them -- do something which relaxes you -- listen to music, do wheat-weaving, watch television, do odd jobs around the house -- whatever relaxes you.

(f) Eat balanced meals on a regular basis -- this is not much of a problem on farms, but is a serious problem in cities where people live a faster lifestyle and eat out all the time as their time allows them.

(g) When setting your goals keep them realistic and make allowances for small rewards along the way-- the best way to wreck a long term plan is to make no allowance for short term rewards for yourself. When planning your financial future make sure that you have put in some allowance for treats for yourself and your family along the way to the eventual goal. Nothing spoils a good financial plan better than refusing to spoil yourself a little along the way. You can plan to go out to the movies, go to dances or just anything which you will appreciate as a reward for your labours, and if you do not, the present weight of your sacrifices will soon outweigh the desirability of your future goals.

(h) Worry productively -- there are enough things which a farmer has to worry about that he can do something about that he should not have time to worry about things that he has no control over, but unfortunately farmers, like most people, do worry about things that they can do nothing about. In order to make the best of a bad situation, a person must do what he can to improve it, not sit and fret about the things that he can not change.

Helping people deal with stress has become a multi-million dollar industry in our country today. What the experts are finding is that the farmer's lifestyle comes the closest to the approximation of that which is the best lifestyle for dealing with stress so long as financial anxiety can be controlled.

If you are finding the stress of dealing with financial difficulty hard to cope with, there are people available to assist you in making the right financial decisions such as the Farmers' Counselling and Assistance Board and also there are people who can give assistance to you in coping with the stresses which develop out of financial difficulty such as the counselling services of the Department of Social Services or your local church. Today it is not necessary for any person to remain an island in a sea of financial despair -- there is emotional help available and it should be used.

There are also courses on stress management available to the people of Saskatchewan through the universities and community colleges of Saskatchewan which farmers could take over the winter.

There are also books on the subject. This chapter was prepared with the assistance of a book written by Dr. Peter G. Hanson called "The Joy of Stress". It is an excellent book which covers the area of stress management well in an easy-to-read format. It is available from many book stores in Saskatchewan, your local library or can be ordered from the publisher at:

Hanson Stress Management Organization
5 Thornbury Crescent
Islington, Ontario
M9A 2M1

This is not the only book available on the subject, there are many -- but it does cover the topic well in an easy-to-read format and for that reason I would recommend it. Its cost is $9.95 plus $2.00 postage if ordered from the publisher.

Chapter 11

Resources for Farmers to Use in Times of Difficulty

11.1 Provincial Governmental Agencies

a) **Department of Agriculture.** The Department of Agriculture is the first place for any farmer to check with when he is in financial difficulty. Within the Department, there are two places which are of particular benefit to any farmer. These are the Economics Branch and the Farm Management Section. They both offer technical expertise and a list of helpful publications which are of incalculable benefit to any farmer wishing to improve the profitability of his operation. Their impressive list of publications is always being added to and they are generally available free of charge.

i) Some of the informational brochures or booklets available from these two branches are:

a. Credit Management
b. Farm Business Arrangements
c. Planning for Profit

For farmers interested in improving their bookkeeping methods, they now have three bookkeeping tools which when combined will give a comprehensive start-to-finish bookkeeping system. The first of these three helpful organizational tools they have prepared for farmers is a combination calendar and set of receipt storage envelopes.

The second is a comprehensive Farm Record Book with features such as:

a. Preprinted pages to record expenses and income by category.
b. Summary sections for wages paid, accounts payable, accounts receivable, crop production, livestock inventory, farm supplies, machinery and equipment.
c. Financial statements such as an operator's net worth statement, statement of farm income, capital cost allowance tables, statement of income and expenses.

The third is a set of complete financial statements which will allow the farmer who has accurately filled them in to see what his actual financial position is. These three tools will, if effectively used, give any farmer a high quality bookkeeping and financial planning system at no cost other than his time and effort to complete them.

You can obtain these booklets and organizational tools from your local Agricultural Representative or by contacting the Farm Management Section of the Department of Agriculture at Room 329, 3085 Albert Street, Regina S4S 0B1 or phone 787-6933.

ii) **Farmer's Counselling and Assistance Board.** The Farmer's Counselling and Assistance Board has two functions -- to administer a loan guarantee program and to provide counselling and assistance to farmers in financial difficulty. It uses persons who have shown a demonstrated ability to manage far-

ming operations in a profitable fashion or who have professional expertise in the farm management field to evaluate farmers' operating methods and give financial counselling to them.

A farmer may obtain applications and farm plan forms from his local Ag Rep office or by contacting the program chairman at:

Program Chairman
Counselling and Assistance for Farmers
Room 223, 3085 Albert Street
Regina, Saskatchewan
S4S 0B1

The board also has a toll free number which is 1-800-667-9819. They offer financial counselling and answers to a wide range of specific questions regarding financial planning or general questions regarding the program itself.

iii) **Farm Land Security Board.** The Farm Land Security Board will, at the request of farmers, mediate between the farmer and his lending institution once the lending institution has given a notice of intention to start a foreclosure action. However, the board will also be looking to see that the farmer has a reasonable possibility of meeting mortgage obligations and is making a sincere effort to do so in order to make a report to the court in the application for foreclosure so the relationship between the farmer and the board will not be the same as with the Farmer's Counselling and Assistance Board. As a result, if you are in financial difficulty you should still consult with the Farmers' Counselling and Assistance Board hopefully before the lending institution gives notice to the Farm Land Security Board that it will be applying for leave to commence a foreclosure action.

iv) **Farm Purchase Program.** If part of a farmer's plan for farm reorganization is bringing his children into the farming operation after they reach the age of 18, he should look into the Farm Purchase Program which may be of assistance to young people buying farm land in Saskatchewan. It is a rebate program which can reduce the actual interest paid on purchase of bare land down to 8%. There are specific criteria to qualify for the program. Further information may be obtained by contacting:

Farm Purchase Program
3085 Albert Street
Regina, Saskatchewan
S4S 0B1
Telephone (outside Regina) 1-800-667-8172
In Regina 787-9455

b) **Saskatchewan Consumer and Commercial Affairs.** This government agency, as its name suggests, has a very broad mandate and it administers very many programs. Some of those of most interest to farmers in financial difficulty are:

i) **Provincial Mediation Board.** This board is of great assistance to any person in financial difficulty. The board, as its name suggests, mediates between debtors and creditors. It also administers the Orderly Payment of Debt Provisions of the Bankruptcy Act. You can contact the board at:

Provincial Mediation Board
1871 Smith Street
Regina, Saskatchewan
S4P 2N5
Telephone: 787-2295 (collect outside of Regina)

ii) **Regulation of Collection Agencies and Credit Reporting Bureaus.** If you feel that the tactics being used by collection agents are engaging in prohibited practices under the collection agencies act, you may contact the Department at:

Department of Consumer and Commercial Affairs
1871 Smith Street
Regina, Saskatchewan
Telephone: 787-5550

d) Department of Supply and Services. If you wish to obtain copies of any of the Provincial Statutes mentioned in this book, you may do so by contacting the Office Services Agency of the Department at:

In person:
Office Services Agency
Main Floor (East Wing)
T. C. Douglas Building
3475 Albert Street
Regina, Saskatchewan

By mail:
Office Services Agency
3rd Floor, 2045 Broad Street
Regina, Saskatchewan
S4P 3V7

For information on the cost of the statutes you can phone 787-6894. As a general rule the cost of the statutes varies from $.60 to $3.00 depending on length.

e) **Department of Social Services.** Any person may obtain help in dealing with the emotional strain of dealing with financial problems and the strain they may place on family relations

by contacting the Mental Health Services Clinic in their area. The address and telephone number is available in the blue pages of the telephone book or by calling:

Department of Social Services
1920 Broad Street
REGINA, Saskatchewan
787-3494

11.2 Federal Government Agencies.

a) **Revenue Canada.** For up-to-date information relating to income tax topics, forms or informational booklets on income tax preparation for farmers, there are two Revenue Canada offices to contact:

1955 Smith Street
Regina, Saskatchewan
S4P 2N9
Local Calls 780-6015
Long Distance 1-800-552-8031

201 - 21st Street East
Saskatoon, Saskatchewan
S7K 0A8
Local Calls 975-4595
Long Distance 1-800-772-8737

b) **Department of Consumer and Corporate Affairs.** Bankruptcy -- any person may obtain information about bankruptcy by contacting the Bankuptcy Division of Consumer and Corporate Affairs at:

2212 Scarth Street
Regina, Saskatchewan
S4P 2J6
780-5391

If you wish to declare bankruptcy you must contact a trustee in bankruptcy. A number of the major accounting firms in Regina and Saskatoon act as trustees in bankruptcy. In order to find their names and telephone numbers you can check under trustees in bankruptcy in the Yellow Pages of the phone book.

11.3 Lawyers and Accountants. There is no particular reference agency to contact to find a lawyer or an accountant who specializes in farm law or accounting. You are best to check in the Yellow Pages in the telephone directory for lawyers or accountants in your area. There is no recognition of farm law as a specialized area of the law by the Law Society of Saskatchewan. There are, however, a number of accountants and bookkeeping agencies who specialize in farm accounting.

11.4 Public Legal Education Association of Saskatchewan. This association is a non-profit corporation funded by the Law Foundation of Saskatchewan. It publishes a large number of pamphlets of general legal information and has two pamphlets of particular interest to farmers -- on Financial Difficulties and on Occupiers Liability. They also sponsor seminars and make speakers available to farm groups for legal information. You can obtain a list of their publications or obtain further information by contacting:

Public Legal Education Association of Saskatchewan
400, 241 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K8

Appendix A
Farm Debt Review Act

The Farm Debt Review Act is a statute just passed into law by the Federal Government. The aim of this statute is to assist farmers in financial difficulty in negotiating with their creditors and reaching an arrangement for repayment of their debts with their creditors.

The Farm Debt Review Act is administered by the Farm Debt Review Board in Saskatchewan. The Board will appoint a number of Farm Debt Review Panels which are similar to the panels appointed under the Farm Land Security Act to meet with farmers and mediate between the farmer and his creditors.

Any farmer in financial difficulty may apply to the Farm Debt Review Board for a review of his financial affairs or for assistance in facilitating an arrangement with his creditors. This is a very similar function to that performed by the Farmer's Counselling and Assistance Program which is a provincial program. There is one substantial difference between the two. The Farmer's Counselling and Assistance Program is able to arrange for the farmer to receive guaranteed operating loans.

The Farm Debt Review Act also applies to insolvent farmers who are defined under the Act as:

(a) who is for any reason unable to meet his obligations as they generally become due;

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or,

(c) the aggregate of whose property is not, at fair market value, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all his obligations, due and accruing due.

Under the Act where any creditor wishes to take any action to realize on any secured collateral (real or personal property) of any farmer he has to give the farmer written notice of his intention to do so and advise the farmer of his right, if he is an insolvent farmer, to make an application under the Act. Where a farmer states that he is an insolvent farmer, in an application to the Board, a stay of proceedings will be entered for a period of 30 days to prevent the creditor from realizing on the farmer's assets during the stay of proceedings. This stay of proceedings can be extended for two further periods of 30 days where it is essential to the formulation of an arrangement between a farmer and his creditors. During the period that the creditor's action is stayed, the farmer may be appointed as guardian of his own property. It should be noted however, that the Board does not have to appoint the farmer as the guardian of his assets. It may also appoint another qualified person chosen by it or a qualified person nominated by any of the secured creditors. The farmer will be appointed as guardian of his assets only where in the opinion of the Board he is qualified to be the guardian of his assets and no other person is nominated by any secured creditor to be appointed guardian. Where a person other than a farmer is appointed as guardian of his assets, if appointed by the Board, the Board shall pay the expenses of the guardian and where a secured creditor has appointed the guardian, his expense shall be paid by the secured creditor.

Where a farmer is appointed guardian of his assets, he is required to comply with any directive issued to him by the Board. These directives will include preparing an inventory of his assets and periodically verifying the presence and condition of the assets.

It is very important for farmers to receive legal advice regarding the alternatives available to him when he is in financial difficulty. Much of the provisions of the Farm Debt Review Act are duplicated by provincial legislation. A farmer may use a combination of provincial and federal assistance and guidance under the Farm Debt Review Act and the Farmer's Counselling and Assistance Act and other provincial legislation or he may choose among them. The alternatives available to a farmer are complex and he should receive competent legal advice regarding his alternatives before selecting them.

I cannot comment further on the interaction of our provincial statutes and the Federal Debt Review Act at this time because the Farm Debt Review Board is only starting to implement the Act.

Unlike most other provinces in Canada, the Province of Saskatchewan has passed a number of laws of significant benefit to farmers in financial difficulty, and as a result in Saskatchewan farmers are able to select, or combine, assistance programs and counselling assistance through both federal and provincial agencies. As a result of the large number of benefits and aids available to farmers in Saskatchewan, which are not generally available to farmers anywhere else in Canada, a farmer should obtain competent legal advice when choosing between his alternatives.